

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

J. MICHAEL CHARLES; MAURICE W.	)	C. A. NO. 05-702 (SLR) WARD,
JR.; and JOSEPH I. FINK, JR., on	)	(Lead Case)
behalf of themselves and all others similarly	)	
situated,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
PEPCO HOLDINGS, INC; CONECTIV, and	)	
PEPCO HOLDINGS RETIREMENT PLAN,	)	
	)	
Defendants.	)	

APPENDIX TO BRIEF IN OPPOSITION TO DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT AND IN SUPPORT OF PLAINTIFFS' CROSS-MOTION  
FOR PARTIAL SUMMARY JUDGMENT

**CHIMICLES & TIKELLIS LLP**

Pamela S. Tikellis (#2172)

Robert J. Kriner (#2546)

A. Zachary Naylor (#4439)

One Rodney Square

P.O. Box 1035

Wilmington, DE 19899

302-656-2500 (telephone)

302-656-9053 (fax)

and

James R. Malone, Jr.

(*pro hac vice*)

Joseph G. Sauder

(*pro hac vice*)

One Haverford Centre

361 West Lancaster Avenue

Haverford, PA 19041

610-642-8500 (telephone)

610-649-3633 (fax)

June 19, 2007

Attorneys for Plaintiffs

Cain Deposition Transcript, dated April 17, 2007 .....	B0001
Charles Deposition Transcript, dated January 9, 2007 .....	B0038
Fink Deposition Transcript, dated January 11, 2007 .....	B0099
Kra Deposition Transcript, dated May 25, 2007 .....	B0150
Conectiv Cash Balance Sub-Plan Spreadsheets, Bates Nos. KRA00414-447 [P-34].....	B0190
Expert Report of Ethan E. Kra, Ph.D, F.S.A. dated 4/20/07, Bates Nos. KRA00019-38 [P-35].....	B0224
Maurice W. Ward Cash Balance Account Statement for 1/1/02-12/31/02, Bates Nos. KRA00168-69 [P-38] .....	B0244
5-13-02 Article Titled “Benefits Experts Rebut Report Hitting Cash Balance Payouts” [P-39] .....	B0246
Handwritten Note, Bates No. KRA00001 [P-40].....	B0248
Kremmel Deposition Transcript, dated March 13, 2007 .....	B0249
Troup Deposition Transcript, dated January 12, 2007 .....	B0298
Ward Deposition Transcript, dated January 10, 2007 .....	B0316
Wilkinson Deposition Transcript, dated April 4, 2007 .....	B0364
Charles Declaration .....	B0400
Ward Declaration .....	B0401
Conectiv Cash Balance Plan Slides dated February 20, 1998, Bates Nos. JMC00444-458 [D-3] .....	B0402
April 23, 1998 Minutes of the Personnel and Compensation Committee, Bates Nos. PHI001584-91 [P-2] .....	B0417
Cash Balance Sub-Plan, dated January 1, 1999 Bates Nos. PHI001538-1583 [P-10] .....	B0425

Conectiv Retirement Plan, dated January 1, 1999 Bates Nos. PHI000481-520.....	B0471
Mid-Week Extra - Cash Balance Update, dated June 23, 1999 Bates Nos. JMC00006-7 [D-10].....	B0511
July 1999, Meeting Powerpoint Presentation on Cash Balance Pension Plan, Bates Nos. MWW00301-07 [P-4].....	B0513
2001 Conectiv Retirement Plan Statement of Maurice W. Ward, Bates Nos. MWW00004-5.....	B0520
Conectiv Total Rewards (Senior Management Powerpoint slides), Bates Nos. JMC00197-214 [D-8] .....	B0522
Bates Death Certificate, death January 7, 2002 .....	B0540
Excerpt from 2006 Conectiv Form 10-K.....	B0541
Weighted Average Interest Rate Table .....	B0544
Poulin Report.....	B0552

**In The Matter Of:**

*J. Michael Charles, et al*  
v.  
*Pepco Holdings, Inc., et al*

---

*DONALD E. CAIN*  
*April 17, 2007*

---

***REPORTING ASSOCIATES, LLC***

*Certified & Registered Professional Reporters*

*Cherry Hill -- Philadelphia -- Trenton*

*(888) 795-2323*



*www.ReportingAssociates.com*

DONALD E. CAIN

Page 1

1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
3           CIVIL ACTION NO. 05-702 (SLR)

4           -----  
5           J. MICHAEL CHARLES; MAURICE W.  
6           WARD, JR.; and JOSEPH I. FINK, JR.,  
7           on behalf of themselves and all  
8           others similarly situated,

9                     Plaintiffs,

10                    v.

11           PEPCO HOLDINGS, INC.; CONECTIV, and  
12           PEPCO HOLDINGS RETIREMENT PLAN,

13                     Defendants.  
14           -----

15                     Wilmington, Delaware  
16                     Tuesday, April 17, 2007

17                     TRANSCRIPT of testimony of DONALD E.  
18           CAIN, as taken by and before Sean M. Fallon, a  
19           Registered Professional Reporter and Notary Public,  
20           at the offices of PEPPER HAMILTON LLP, Hercules  
21           Plaza, Suite 5100, 1313 Market Street, commencing  
22           at 10:14 o'clock in the forenoon.  
23  
24

## DONALD E. CAIN

Page 2	Page 4
<p>1 A P P E A R A N C E S:</p> <p>2 CHIMICLES &amp; TIKELLIS LLP</p> <p>3 BY: JOSEPH G. SAUDER, ESQ.</p> <p>4 One Haverford Centre</p> <p>5 361 West Lancaster Avenue</p> <p>6 Haverford, PA 19041</p> <p>7 (610) 642-8500</p> <p>8 josephsauder@chimicles.com</p> <p>9 Attorneys for Plaintiffs</p> <p>10</p> <p>11 PEPPER HAMILTON LLP</p> <p>12 BY: BARAK A. BASSMAN, ESQ.</p> <p>13 3000 Two Logan Square</p> <p>14 Eighteenth and Arch Streets</p> <p>15 Philadelphia, PA 19103-2799</p> <p>16 (215) 981-4000</p> <p>17 bassmanb@pepperlaw.com</p> <p>18 Attorneys for Defendants</p> <p>19 LITTLER MENDELSON</p> <p>20 BY: SUSAN KATZ HOFFMAN, ESQ.</p> <p>21 Three Parkway</p> <p>22 1601 Cherry Street, Suite 1400</p> <p>23 Philadelphia, PA 19102-1321</p> <p>24 (267) 402-3000</p> <p>shoffman@littler.com</p> <p>Attorneys for Defendants</p> <p>BARBARA C. ALEXANDER,</p> <p>ASSISTANT GENERAL COUNSEL</p> <p>Pepco Holdings, Inc.</p> <p>P.O. Box 231</p> <p>Wilmington, DE 19849-0231</p> <p>(302) 429-3206</p> <p>Attorney for Defendants</p>	<p>1 P-9 Document entitled, "Conectiv Retirement 67</p> <p>Plan"</p> <p>2</p> <p>3 P-10 Document entitled, "Part One, Conectiv 70</p> <p>4 Cash Balance Sub-Plan"</p> <p>5 D-1 Document entitled, "EMerging Times," 25</p> <p>6 Oct. 13, 1997</p> <p>7 D-2 Document entitled, "EMerging Times," 30</p> <p>8 Oct. 20, 1997</p> <p>9 D-3 Document entitled, "Conectiv Cash 113</p> <p>10 Balance Plan," Feb. 20, 1998</p> <p>11 D-5 Document entitled, "Facts," PHI003365 57</p> <p>12 thru PHI003372</p> <p>13 D-6 Document JMC00001 thru JMC00005 53</p> <p>14 D-7 Document entitled, "Your Conectiv 125</p> <p>15 Total Rewards," JMC00190 thru JMC00196</p> <p>16 D-8 Document entitled, "Conectiv Total 117</p> <p>17 Rewards, The Tangible and Hidden</p> <p>18 Paychecks"</p> <p>19 D-9 Document entitled, "InSight," 73</p> <p>20 March 1999</p> <p>21 D-10 Document entitled, "MidWeek Extra," 80</p> <p>22 June 23, 1999</p> <p>23 D-12 Document entitled, "InSight Online," 93</p> <p>24 July 9, 1999</p> <p>25 D-13 Slide Presentation, MWW00219 thru 92</p> <p>26 MWW00225</p> <p>27 D-19 Document entitled, "Conectiv 128</p> <p>28 Retirement Plan, Cash Balance</p> <p>29 Sub-Plan"</p> <p>30 D-22 Document entitled, "Introducing the 129</p> <p>31 New Cash Balance Retirement Plan"</p>
Page 3	Page 5
<p>1 I N D E X</p> <p>2 WITNESS PAGE</p> <p>3 DONALD E. CAIN</p> <p>4 By Mr. Sauder 6</p> <p>5 E X H I B I T S</p> <p>6 NUMBER DESCRIPTION PAGE</p> <p>7 P-17 Subpoena 24</p> <p>8 P-18 E-Mail, PHI003821 55</p> <p>9 P-19 E-Mail, PHI003810 and PHI003811 97</p> <p>10 P-20 E-Mail, PHI003812 thru PHI003814 104</p> <p>11 P-21 E-Mail, PHI003815 and PHI003816 110</p> <p>12 EXHIBITS PREVIOUSLY MARKED AND REFERRED TO</p> <p>13 NUMBER DESCRIPTION PAGE</p> <p>14 P-2 Document entitled, "Conectiv Minutes 32</p> <p>15 of the Personnel and Compensation</p> <p>16 Committee," 4-23-98</p> <p>17 P-3 Document entitled, "Facts," MWW00229 64</p> <p>18 thru MWW00232</p> <p>19 P-4 Slide Presentation, MWW00301 thru 86</p> <p>20 MWW00307</p> <p>21 P-5 Document entitled, "Conectiv 125</p> <p>22 Retirement Plan, Summary Plan</p> <p>23 Descriptions"</p> <p>24 P-6 Document entitled, "Pepco Holdings, 130</p> <p>25 Inc., B L England Management</p> <p>26 Enhanced Severance Plan"</p> <p>27 P-7 Document entitled, "Pepco Holdings, 131</p> <p>28 Inc., General Release"</p>	<p>1 REQUESTS FOR PRODUCTION:</p> <p>2 PAGE LINE</p> <p>3 63 15</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

2 (Pages 2 to 5)

DONALD E. CAIN

Page 6	Page 8
<p>1 (It is hereby stipulated and agreed 2 by and among counsel that sealing, certification 3 and filing are waived; 4 It is further stipulated and agreed 5 by and among counsel that all objections, except as 6 to the form of the question, are reserved until the 7 time of trial.) 8 DONALD E. CAIN, after having been 9 first duly sworn, was examined and testified as 10 follows: 11 EXAMINATION 12 BY MR. SAUDER: 13 Q. Good morning, sir. 14 A. Hi. 15 Q. Sir, could you please state your 16 full name and address. 17 A. Donald E. Cain, 22 Fall Brooke Road, 18 Newark, Delaware, 19711. 19 Q. And do you have any other addresses? 20 A. No. 21 Q. Do you own any other homes? 22 A. Yes. 23 Q. Where are the other homes you own? 24 A. I have a home outside of Fenwick</p>	<p>1 something? 2 A. I don't remember. 3 Q. So, let me just give you some 4 background instructions I'm sure you've gone over 5 with your counsel. 6 I just ask that you listen to the 7 question and, if you have any -- if you don't 8 understand the question, that you ask me to repeat 9 the question, because, if you answer, I will assume 10 that you understood the question. 11 A. Okay. 12 Q. I also ask that you give all your 13 answers verbally. 14 A. Okay. 15 Q. And I'd ask that you let me finish 16 the question before you give an answer, and I will 17 do the same for you, so that the court reporter can 18 take everything down. 19 Do you understand that? 20 A. Fine. 21 Q. And if at any point you need a 22 break, just ask us, and we'll accommodate you. I 23 just ask that, if you need a break, if there is a 24 question pending, that you wait until you give the</p>
Page 7	Page 9
<p>1 Island. 2 Q. What's the address? 3 A. I don't know. 4 Q. How long have you owned that home? 5 A. Since 2003. 6 Q. And you don't have the address? 7 A. We don't get mail there. 8 Q. What was your date of birth? 9 A. 8-28-1945. 10 Q. Are you currently employed? 11 A. No. 12 Q. Have you given any prior depositions 13 in any other matters? 14 A. Yes. 15 Q. How many times have you been 16 deposed? 17 A. Best I remember, once. 18 Q. And how long ago was that? 19 A. I don't remember. 20 Q. What did that involve? 21 A. I don't remember. 22 Q. Was it work related? 23 A. Yes. 24 Q. Was the company being sued for</p>	<p>1 answer and then we can take a break, okay? 2 A. Okay. 3 Q. Sir, are you represented by counsel 4 today? 5 A. Yes. 6 Q. And who are you represented by? 7 A. I think, Susan. 8 Q. Okay. 9 MR. BASSMAN: And also -- 10 THE WITNESS: And Pepper. 11 MR. BASSMAN: -- and Pepper is also 12 representing Mr. Cain. 13 BY MR. SAUDER: 14 Q. Okay. 15 Sir, prior to today, other than your 16 attorney, did you speak with anyone regarding this 17 lawsuit, which was filed in September, 2005? 18 A. No. 19 Q. When did you first learn that there 20 was a lawsuit filed regarding the Cash Balance Plan 21 at Conectiv? 22 A. When -- after I received a VoiceMail 23 about a deposition from -- was it you? 24 Q. Yes.</p>

3 (Pages 6 to 9)

DONALD E. CAIN

<p style="text-align: right;">Page 10</p> <p>1 A. And I talked to counsel at Pepco.  2 Q. Prior to that, had you known  3 anything about a lawsuit?  4 A. No.  5 Q. What, if anything, did you do to  6 prepare for today's deposition?  7 A. Nothing, other than meet with my  8 counsel.  9 Q. And, when you say your counsel, is  10 that --  11 A. Pepper and the other firm.  12 Q. Okay.  13 And when did you meet with your  14 counsel?  15 A. In the last couple weeks. I don't  16 remember the exact day.  17 Q. How many times did you meet with  18 them?  19 A. Once.  20 Q. And for approximately how long?  21 A. Hour and a half.  22 Q. Other than that, did you do anything  23 else to prepare for your deposition?  24 A. No.</p>	<p style="text-align: right;">Page 12</p> <p>1 A. No.  2 Q. Other than your attorney, did you  3 speak with anyone regarding this case?  4 A. No.  5 Q. Sir, if you can give me your  6 educational background after high school.  7 A. I'm a graduate electrical engineer  8 from the University of Delaware. Graduated in  9 1968.  10 Q. Any other post-graduate education?  11 A. No.  12 Q. Did there come a time when you were  13 employed by Delmarva?  14 A. Well, the answer is yes. I'm not  15 sure it was Delmarva at the time.  16 Q. Who were you hired by?  17 A. I think Delaware Power &amp; Light  18 probably. That's another probably answer. I don't  19 remember really.  20 Q. What year was that?  21 A. 1968.  22 Q. At some point in time did that  23 company become Delmarva?  24 A. Yes.</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. Have you talked to Ben Wilkinson  2 lately?  3 A. No.  4 Q. How about Mr. Kremmel?  5 A. No.  6 Q. When was the last time you spoke  7 with Mr. Kremmel?  8 A. Maybe a year ago.  9 Q. When was the last time you spoke  10 with Mr. Wilkinson?  11 A. Probably the last day he was  12 employed.  13 Q. Do you know when that was? A year?  14 A. I don't remember.  15 Q. Do you know what year it was?  16 A. No.  17 Q. Did you review any deposition  18 transcripts in preparation for today's deposition?  19 A. Deposition -- what do you mean by  20 deposition transcripts?  21 Q. Did you review the testimony of Mr.  22 Wilkinson?  23 A. No.  24 Q. How about Mr. Kremmel?</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. When was that?  2 A. I don't remember.  3 Q. And have you worked with -- at what  4 point did you retire from Conectiv?  5 A. My official retirement was August of  6 2002 from Conectiv.  7 Q. And, when you were initially hired  8 in 1968, what was your position?  9 A. I was an engineer in the marketing  10 department.  11 Q. If you could take me through the  12 different positions you had in the company.  13 A. Well, I transferred to an engineer  14 in the operations department, became an assistant  15 superintendent in the operations department, became  16 a superintendent. Was transferred to Salisbury as  17 a manager of operations, came back to Wilmington as  18 vice-president of operations for the Northern  19 Division. Was promoted to vice-president of  20 administrative services. Eventually that morphed  21 into vice-president of HR, and that was it.  22 Q. When you were vice-president of  23 operations, do you know what year that was?  24 A. Well, I came back from Salisbury in</p>

4 (Pages 10 to 13)



DONALD E. CAIN

<p style="text-align: right;">Page 14</p> <p>1 1980.</p> <p>2 Q. 1980, and then how long did you hold</p> <p>3 that position?</p> <p>4 A. I believe it was eight years.</p> <p>5 Q. What were your duties and</p> <p>6 responsibilities in that position?</p> <p>7 A. The overall construction and</p> <p>8 maintenance of the electric and gas facilities in</p> <p>9 New Castle County. Customer service.</p> <p>10 Q. And you became vice-president of</p> <p>11 administrative services?</p> <p>12 A. Yes.</p> <p>13 Q. What did that entail?</p> <p>14 A. Well, data processing, fleet</p> <p>15 services, general services, HR. There may have</p> <p>16 been some other general department over there that</p> <p>17 I'm -- billing services.</p> <p>18 Q. And how long did you hold that</p> <p>19 position?</p> <p>20 A. Until the Atlantic merger.</p> <p>21 Q. So, 1998, around that year?</p> <p>22 A. Whenever that date was.</p> <p>23 Q. You said one of your</p> <p>24 responsibilities in that position dealt with HR?</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. Do you know at what point it became</p> <p>2 Delmarva?</p> <p>3 A. No.</p> <p>4 Q. Were you in a pension plan at that</p> <p>5 time?</p> <p>6 A. Yes.</p> <p>7 Q. And what type of pension plan did</p> <p>8 Delmarva have at that time? The time you were in</p> <p>9 the administrative services/HR?</p> <p>10 A. The kind of plan where you earn</p> <p>11 years of credit to a final formula that is applied</p> <p>12 when you retire.</p> <p>13 Q. A defined benefits plan?</p> <p>14 A. Yes, I believe that's what it was</p> <p>15 called.</p> <p>16 Q. And is that the plan that you were</p> <p>17 in?</p> <p>18 A. Yes.</p> <p>19 Q. After the merger you became</p> <p>20 vice-president of HR --</p> <p>21 A. Yes.</p> <p>22 Q. -- for Conectiv?</p> <p>23 A. Yes.</p> <p>24 Q. Did you play any role in negotiating</p>
<p style="text-align: right;">Page 15</p> <p>1 A. Yes.</p> <p>2 Q. What exactly did you do with regard</p> <p>3 to that?</p> <p>4 A. Well, provided oversight to the</p> <p>5 entire HR function. Oversight and direction.</p> <p>6 Q. What does that exactly mean?</p> <p>7 A. I don't understand your question.</p> <p>8 Q. You were the overall HR --</p> <p>9 A. Right. Responsible for all the HR</p> <p>10 functions.</p> <p>11 Q. And did you report to anyone in that</p> <p>12 capacity?</p> <p>13 A. Yes.</p> <p>14 Q. Who did you report to?</p> <p>15 A. Initially the CEO, and then the</p> <p>16 Chief Operating Officer.</p> <p>17 Q. Did you make decisions regarding</p> <p>18 pension plans in that position?</p> <p>19 A. I made recommendations.</p> <p>20 Q. What type of -- and what was the</p> <p>21 name of the company at that point, 1988 to 1998?</p> <p>22 A. Well, I can't say for certainty.</p> <p>23 Some point you had Delmarva Power and then you had</p> <p>24 Conectiv.</p>	<p style="text-align: right;">Page 17</p> <p>1 the merger?</p> <p>2 A. No.</p> <p>3 Q. Who did you report to as</p> <p>4 vice-president of HR when you were at Conectiv?</p> <p>5 A. Well, Howard Cosgrove.</p> <p>6 Q. Anyone else?</p> <p>7 A. No, not at Conectiv.</p> <p>8 Q. At what point in time was the idea</p> <p>9 discussed that Conectiv would form what's called a</p> <p>10 Cash Balance Plan?</p> <p>11 A. I don't know the exact year, but it</p> <p>12 would coincide with discussions about getting into</p> <p>13 new and different types of businesses, specifically</p> <p>14 things that might have been nonutility businesses.</p> <p>15 Q. And when was that in relation to the</p> <p>16 merger? At what point in time did you first hear</p> <p>17 the term "Cash Balance Plan," as it applied to</p> <p>18 Conectiv?</p> <p>19 A. I'm not certain.</p> <p>20 Q. Would it have been six months prior</p> <p>21 to the merger?</p> <p>22 A. Yes.</p> <p>23 Q. Longer than that?</p> <p>24 A. Yes.</p>

5 (Pages 14 to 17)

DONALD E. CAIN

<p style="text-align: right;">Page 18</p> <p>1 Q. How much longer?</p> <p>2 A. I don't know.</p> <p>3 Q. More than a year?</p> <p>4 A. I don't know.</p> <p>5 Q. Who was it that first suggested the</p> <p>6 Cash Balance Plan?</p> <p>7 A. I probably did.</p> <p>8 Q. Who did you suggest it to?</p> <p>9 A. Probably to the CEO.</p> <p>10 Q. And what was your basis for</p> <p>11 suggesting that?</p> <p>12 A. The new business that we were</p> <p>13 getting into and the need to move people back and</p> <p>14 forth, plus we had been through some layoffs and</p> <p>15 had to let people go that were severely</p> <p>16 disadvantaged under the existing pension plan, and</p> <p>17 it was very difficult and, so, this seemed like a</p> <p>18 better solution.</p> <p>19 Q. And where did you get that idea?</p> <p>20 A. Picked it up from utility industry</p> <p>21 meetings that I attended.</p> <p>22 Q. Had you talked to Watson Wyatt prior</p> <p>23 to suggesting the idea of a Cash Balance Plan?</p> <p>24 A. I don't remember.</p>	<p style="text-align: right;">Page 20</p> <p>1 prior to the merger even becoming an idea?</p> <p>2 MR. BASSMAN: Objection.</p> <p>3 MR. SAUDER: You can answer.</p> <p>4 MR. BASSMAN: You can answer.</p> <p>5 THE WITNESS: The merger was not an</p> <p>6 idea when we discussed what we were going to do</p> <p>7 about forming these new businesses. That was well</p> <p>8 underway before the merger was discussed.</p> <p>9 BY MR. SAUDER:</p> <p>10 Q. When you were head of HR from 1988</p> <p>11 to 1998 at the Delmarva entity, had you ever</p> <p>12 considered a Cash Balance Plan for that entity?</p> <p>13 A. First of all, the date is not</p> <p>14 correct because Conectiv was born -- well, I don't</p> <p>15 remember when Conectiv was born, but, prior to the</p> <p>16 merger Delmarva was on its own considering these</p> <p>17 other businesses and, as part of those discussions,</p> <p>18 we began reviewing all the benefits, including the</p> <p>19 pension plan.</p> <p>20 Q. So, had a Cash Balance Plan been</p> <p>21 considered for Delmarva, itself?</p> <p>22 A. Yes.</p> <p>23 Q. When was that?</p> <p>24 A. I don't remember.</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. Had you had a relationship with</p> <p>2 Watson Wyatt at that time?</p> <p>3 A. I don't even remember that.</p> <p>4 Q. Did Delmarva have a relationship</p> <p>5 with Watson Wyatt?</p> <p>6 A. I don't remember that.</p> <p>7 Q. If they had one, you would have</p> <p>8 known about it?</p> <p>9 A. Yes. At the time I would have known</p> <p>10 about it.</p> <p>11 Q. Who was the actuary for Delmarva</p> <p>12 while you were head of HR?</p> <p>13 A. Towers Perrin.</p> <p>14 Q. Had they suggested a Cash Balance</p> <p>15 Plan?</p> <p>16 A. I don't remember.</p> <p>17 Q. Had a Cash Balance Plan ever been</p> <p>18 suggested prior to the idea that Delmarva would be</p> <p>19 merging with ACE?</p> <p>20 A. Yes.</p> <p>21 Q. For Delmarva, itself?</p> <p>22 A. For Conectiv.</p> <p>23 Q. But, prior to that, had a Cash</p> <p>24 Balance Plan ever been discussed just for Delmarva,</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. Shortly before the merger?</p> <p>2 A. I don't remember the time frame.</p> <p>3 Q. You said you were the one who first</p> <p>4 suggested it, correct?</p> <p>5 A. That was a speculation. I don't</p> <p>6 remember a conversation suggesting it, but I would</p> <p>7 suspect so.</p> <p>8 Q. But you are not certain?</p> <p>9 A. I'm not certain.</p> <p>10 Q. What was the next step after this</p> <p>11 was first suggested, the Cash Balance Plan?</p> <p>12 A. I don't remember.</p> <p>13 Q. Do you know who would have been</p> <p>14 involved in the conversations?</p> <p>15 A. No, not at this point.</p> <p>16 Q. At some point did you determine that</p> <p>17 you needed to hire an outside consultant?</p> <p>18 A. I don't remember specifically the</p> <p>19 moment that would have happened.</p> <p>20 Q. But at some point?</p> <p>21 A. We had outside consultants. That's</p> <p>22 a fact.</p> <p>23 Q. Well, at some point did Watson Wyatt</p> <p>24 come in to help out with this?</p>

6 (Pages 18 to 21)

DONALD E. CAIN

Page 22	Page 24
<p>1 A. I don't remember if that's who we 2 had or not. 3 Q. Did Watson Wyatt implement this 4 plan? 5 A. I don't remember that. 6 Q. Did Watson Wyatt ever work for 7 Conectiv? 8 A. Yes. 9 Q. Was Watson Wyatt the actuary for 10 Conectiv? 11 A. I don't believe so. 12 Q. Who was? 13 A. Towers Perrin. 14 Q. Did they help out with the Cash 15 Balance Plan? 16 A. Yes. 17 Q. At what point did they get involved 18 with the Cash Balance Plan? 19 A. I don't remember. 20 Q. At some point in time you hired Ben 21 Wilkinson? 22 A. That's correct. 23 Q. Who was he hired to replace? 24 A. He was hired to manage --</p>	<p>1 employee? 2 A. No. 3 MR. SAUDER: I'm going to show you 4 what I'll have marked as Plaintiffs' 17. 5 (Exhibit P-17 is marked for 6 identification.) 7 BY MR. SAUDER: 8 Q. Sir, showing you what's been marked 9 as Plaintiffs' 17. If you could take a look at 10 that document and let me know if you've seen that 11 document prior to today. 12 A. It looks like the one that I brought 13 with me. 14 Q. Sir, this is a subpoena for today's 15 deposition, correct? 16 A. Yes. 17 Q. And on the back portion, Exhibit 18 A -- 19 A. Okay. 20 Q. -- this requests certain documents. 21 A. Okay. 22 Q. Do you see that? 23 A. In the -- on Page 2? 24 Q. Yes. On Page 2 and 3.</p>
Page 23	Page 25
<p>1 temporarily manage the compensation and benefits 2 function while I believe Moira Donohue worked on 3 the merger. 4 Q. And who interviewed Mr. Wilkinson? 5 A. I did, for one. Others may have. 6 Q. Did you have a prior relationship 7 with Mr. Wilkinson? 8 A. No. 9 Q. How did you find Mr. Wilkinson? 10 A. In discussions with one of our board 11 members from DuPont, who knew that he was, I think, 12 retiring from DuPont or going out on a package or 13 something. 14 Q. And what role did he play? 15 A. Well, he managed the compensation 16 and benefits for the Delmarva company while the 17 merger was going on. 18 Q. Who did he report to? 19 A. Reported to me. 20 Q. And what was the Employment 21 Agreement with Mr. Wilkinson when he came on? 22 A. I don't remember. It's some type of 23 contract. 24 Q. He wasn't brought on as a regular</p>	<p>1 A. Yes. 2 Q. Do you have any of these documents? 3 A. No. 4 Q. Did you look for any of these 5 documents? 6 A. No. 7 Q. Are you certain that you have 8 nothing relating to these requests? 9 A. Absolutely. 10 Q. Sir, showing you what's been 11 previously marked as Defense Exhibit 1. Take a 12 look at that document and let me know if you've 13 seen that document prior to today. 14 A. I have no recollection of this 15 specific document. 16 Q. You have no recollection whether 17 you've seen this prior to today? 18 A. No specific recollection. 19 Q. Do you know who prepared this 20 document? 21 A. No, I don't. 22 Q. Do you know if you played any role 23 in preparing this document? 24 A. I don't know for sure. It's been a</p>

7 (Pages 22 to 25)

DONALD E. CAIN

<p style="text-align: right;">Page 26</p> <p>1 long time.</p> <p>2 Q. Do you know whether this document</p> <p>3 was disseminated?</p> <p>4 A. I can't say that for sure.</p> <p>5 Q. Do you see the first column?</p> <p>6 A. Okay.</p> <p>7 Q. There is question and answer, and</p> <p>8 then the second -- or the third sentence in on the</p> <p>9 answer states, "It is designed to be viewed as</p> <p>10 competitive by employees and flexible to</p> <p>11 accommodate changing business conditions."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. "Designed to be viewed as</p> <p>15 competitive by employees," do you have any</p> <p>16 understanding of what that meant?</p> <p>17 MR. BASSMAN: Objection.</p> <p>18 BY MR. SAUDER:</p> <p>19 Q. You can answer, sir.</p> <p>20 A. I don't remember exactly. It would</p> <p>21 be speculation.</p> <p>22 Q. The second column over there is</p> <p>23 another question down the middle of the page, and</p> <p>24 down towards the middle of the question it says in</p>	<p style="text-align: right;">Page 28</p> <p>1 A. Yes, because I don't remember</p> <p>2 exactly.</p> <p>3 Q. Okay.</p> <p>4 Look to the next page. The question</p> <p>5 at the top of the page, "When will we know the</p> <p>6 details of the new total rewards program?" Then it</p> <p>7 states, "The Total Rewards transition team is</p> <p>8 continuing to work out the details of the program</p> <p>9 throughout the fall, including plans for an</p> <p>10 extensive communication and educational effort to</p> <p>11 support employees in making informed decisions</p> <p>12 about their benefits in a choice" -- and that's in</p> <p>13 quotes -- environment."</p> <p>14 "Transition team." What does that</p> <p>15 refer to?</p> <p>16 MR. BASSMAN: Objection.</p> <p>17 THE WITNESS: I don't remember.</p> <p>18 BY MR. SAUDER:</p> <p>19 Q. Do you have any recollection of</p> <p>20 there being a transition team relating to the</p> <p>21 benefits package when Conectiv -- when there was a</p> <p>22 merger?</p> <p>23 A. Not specifically.</p> <p>24 Q. Did you play any role in any</p>
<p style="text-align: right;">Page 27</p> <p>1 there, "A new pension plan will replace the old,</p> <p>2 quote, final pay, end quote, plans with individual,</p> <p>3 portable accounts."</p> <p>4 A. Yes.</p> <p>5 Q. Do you see that sentence?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know if, at that time -- this</p> <p>8 document is dated October 13, 1997 -- do you know</p> <p>9 if, at that time, you knew that the plan would be a</p> <p>10 Cash Balance Plan?</p> <p>11 A. I don't know.</p> <p>12 Q. This document, the bold portion up</p> <p>13 in the upper left-hand column states, "Total</p> <p>14 Rewards Communicate Conectiv."</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. "Total Rewards," what does that</p> <p>18 mean?</p> <p>19 MR. BASSMAN: Objection.</p> <p>20 BY MR. SAUDER:</p> <p>21 Q. You can answer, sir.</p> <p>22 A. It probably means pay and all</p> <p>23 benefits.</p> <p>24 Q. Are you speculating?</p>	<p style="text-align: right;">Page 29</p> <p>1 transition team with regard to the benefits at that</p> <p>2 time?</p> <p>3 A. I don't remember.</p> <p>4 Q. What was Mr. Wilkinson brought on to</p> <p>5 do?</p> <p>6 A. To manage the compensation and</p> <p>7 benefits function for Delmarva while the merger was</p> <p>8 going on.</p> <p>9 Q. And what does that mean?</p> <p>10 A. Means to take care of making sure</p> <p>11 pay plans and benefit plans are carried out the way</p> <p>12 they were intended, dealing with issues that arise</p> <p>13 concerning pay and benefits and those things.</p> <p>14 Q. Did he play any role in implementing</p> <p>15 the Cash Balance Plan?</p> <p>16 A. Yes.</p> <p>17 Q. Who else played a role in that?</p> <p>18 A. I don't remember.</p> <p>19 Q. Did you?</p> <p>20 A. I provided some oversight at some</p> <p>21 point.</p> <p>22 Q. You were his boss, right?</p> <p>23 A. Yes, correct.</p> <p>24 Q. Sir, I'm showing you what's</p>

8 (Pages 26 to 29)

DONALD E. CAIN

<p style="text-align: right;">Page 30</p> <p>1 previously been marked Defense Exhibit 2. If you 2 could take a look at this document and let me know 3 if you've seen this prior to today. 4 A. No. 5 Q. Have you had an opportunity to look 6 at the document? 7 A. No. 8 Do you want me to look at it? 9 Q. If it will help refresh your 10 recollection, I do. 11 You don't remember seeing this prior 12 to today? 13 A. I don't remember specifically seeing 14 it. 15 Q. Are you familiar with the document 16 titled EMerging Times? 17 A. Only that you put it in front of me 18 now and -- 19 Q. But, prior to this moment, you have 20 no recollection of any documents being entitled 21 "EMerging Times" at Conectiv? 22 A. Not a specific title, no. 23 Q. Fair to say you have no recollection 24 of being involved with preparing this document?</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. Did you have any role in hiring 2 Watson Wyatt? 3 A. If they were hired, I may have 4 approved the hiring. 5 I didn't hire them directly. 6 Q. You have no specific recollection of 7 hiring them? 8 A. I don't remember. 9 Q. Do you have any specific 10 recollection of working with Towers with regard to 11 the Cash Balance Plan? 12 A. Yes, they were the actuary. 13 Q. And do you know what, if any, 14 experience they had with Cash Balance Plans prior 15 to implementing the Conectiv Cash Balance Plan? 16 A. I don't remember. 17 Q. Sir, I'm showing you what has been 18 previously marked as Plaintiffs' Exhibit 2. If you 19 could take a look at that document and let me know 20 if you've seen that prior to today. 21 A. Yes. 22 Q. When did you see that prior to 23 today? 24 A. I saw it this morning.</p>
<p style="text-align: right;">Page 31</p> <p>1 A. Not specifically this document. 2 Q. Fair to say you have no idea who 3 prepared this document? 4 A. I have no idea at this point. 5 Q. You have no idea how this was 6 communicated or whether this was communicated? 7 A. No, I would -- it's the document. 8 Q. Right, okay. 9 You said Watson Wyatt was one of the 10 actuarial firms that worked with Conectiv in 11 implementing the Cash Balance Plan, is that 12 correct? 13 MR. BASSMAN: Objection. 14 Mischaracterizes his prior testimony. 15 BY MR. SAUDER: 16 Q. Is that correct? 17 A. You said actuarial. Towers Perrin 18 was the actuarial firm, as far as I remember. 19 Q. What role did Watson Wyatt play in 20 implementing the Cash Balance Plan? 21 MR. BASSMAN: Objection. 22 BY MR. SAUDER: 23 A. I don't remember. I really don't 24 remember.</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. Prior to this, had you seen it? 2 A. Not that I remember. 3 Q. Sir, what is this document? 4 A. I don't know. 5 Q. If you could take a look -- 6 A. It says the minutes of the personnel 7 and compensation committee. 8 Q. Were you present at that meeting? 9 A. If I'm listed on there, I was. 10 Q. Are you listed on there? 11 A. Yes. 12 Q. So you were there? 13 A. Yes. 14 Q. With Mr. Wilkinson? 15 A. It says he was there, so.... 16 Q. So you assume he was there? 17 A. I assume he was there. 18 Q. Do you have any specific 19 recollection of this meeting? 20 A. No. 21 Q. Do you know what the purpose of this 22 meeting was? 23 A. No. 24 Q. Could you take a look at the</p>

9 (Pages 30 to 33)



DONALD E. CAIN

<p style="text-align: right;">Page 34</p> <p>1 document and let me know if that refreshes your 2 recollection as to what the specific purpose of 3 this meeting was? 4 A. Sounds like -- seems like the 5 purpose was to implement a complete benefits 6 package and compensation package for Conectiv going 7 forward. 8 Q. Do you know how you prepared for 9 that meeting? 10 A. I have no idea. 11 Q. If you look at the first -- the 12 paragraph in the middle of the page that starts 13 out, "The chairman." Do you see that? 14 A. Yes. 15 Q. The last sentence of that paragraph 16 states, "She then referred to materials that had 17 been previously distributed to the committee 18 members." 19 Do you see that sentence? 20 A. Yes. 21 Q. Now, if you flip to the back portion 22 of this, there is PHI001588, at the bottom 23 right-hand corner, through 91. 24 Do you see that?</p>	<p style="text-align: right;">Page 36</p> <p>1 A. I don't know. 2 Q. Do you know if anything was handed 3 out at this meeting? 4 A. I don't know. 5 Q. You have no idea? 6 A. No. 7 Q. If you look at that attachment, have 8 you seen that attachment prior to today? 9 A. I don't recollect it. 10 Q. You don't remember? 11 A. No. 12 Q. If you look at the next paragraph, 13 where it starts out, "The chairman then called," 14 and then there are numbers? 15 A. Right. 16 Q. That last numbered sentence, Number 17 3, says, "The interest in being competitive both in 18 cost and attractiveness to employees." 19 Do you see that? 20 A. Yes. 21 Q. And that's referring to "The 22 chairman then called on Mr. Cain who reviewed the 23 philosophy and approach for employee benefits at 24 Conectiv, with an emphasis on," and one of the --</p>
<p style="text-align: right;">Page 35</p> <p>1 A. Yes. 2 Q. Do you recognize that? 3 A. No. 4 Q. Have you seen that attachment prior 5 to today? 6 A. No. 7 Q. Do you know if these are the 8 materials that they were referring to in this -- in 9 the minutes? 10 A. I can't -- 11 MR. BASSMAN: Objection. You can 12 answer. 13 THE WITNESS: I don't know. 14 MR. BASSMAN: Foundation. He has no 15 foundation to testify as to what the meaning of the 16 terms are in this document. 17 BY MR. SAUDER: 18 Q. What is your answer, sir? 19 A. Repeat your question. 20 Q. Do you know if this is the -- this 21 is the materials that are referred to in the 22 minutes? 23 A. No, I don't. 24 Q. You don't know?</p>	<p style="text-align: right;">Page 37</p> <p>1 the emphasis is "The interest in being competitive 2 in both cost and attractiveness to employees." 3 Do you see that? 4 A. Yes. 5 Q. What does that mean? "Competitive 6 in both cost," what does that specific portion 7 mean? 8 MR. BASSMAN: Objection. You can 9 answer. 10 THE WITNESS: The cost -- well, I'm 11 speculating. 12 I don't know the answer to that now. 13 I would just be guessing. 14 BY MR. SAUDER: 15 Q. Does it mean cost savings to the 16 company? 17 MR. BASSMAN: Objection. 18 THE WITNESS: I don't remember. 19 BY MR. SAUDER: 20 Q. The next paragraph down, do you see 21 the sentence towards the bottom of that, that 22 says -- and this is referring to you -- "He 23 acknowledged that this creates a risk related to 24 the reaction of management employees who will be</p>

10 (Pages 34 to 37)

DONALD E. CAIN

<p style="text-align: right;">Page 38</p> <p>1 the first to feel the effect of the changes but 2 stated that this risk could be managed in light of 3 the cost savings to be realized from the new 4 program." 5 Do you see that? 6 A. Yes. 7 Q. What did you mean by, "first to feel 8 the effect of the changes"? 9 A. The changes -- let's see. I believe 10 it was that the changes were being made for 11 management employees before bargaining unit 12 employees, which would create some difficulty at 13 the lower -- first level supervisor level. 14 Q. Why is that? 15 A. Because the plans would be 16 different. 17 Q. Why would it create some difficulty? 18 Difficulty for who? 19 A. For the folks in the management 20 plan. 21 Q. Why is that? 22 A. Because the overall benefits package 23 would not be exactly the same as what they were 24 coming out of the union with.</p>	<p style="text-align: right;">Page 40</p> <p>1 A. Extensive communications. 2 Q. To explain that there was nothing to 3 be worried about? 4 A. To explain the details of it. We 5 would have been in the posture that employees in 6 the end would have to decide for themselves whether 7 it was good or bad for them, as individuals, but we 8 would communicate all that we could about 9 everything that we knew. 10 Q. Well, the employees who ended up on 11 a Cash Balance Plan did not have a choice, correct? 12 A. Well, there were some employees who 13 had the -- who had an option. 14 Q. Who were they? 15 A. There were some cut-off set. 16 Q. Grandfathered employees? 17 A. Yes. 18 Q. But, beyond that, the other 19 employees did not have a choice, correct? 20 A. That's correct. 21 Q. In managing that risk, was it an 22 effort by the company to communicate to the 23 employees that this was not worse than the plan 24 that they were currently in?</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. They would be worse? 2 MR. BASSMAN: Objection. 3 THE WITNESS: I couldn't say today 4 whether it would be worse. It would be different. 5 BY MR. SAUDER: 6 Q. Do you remember at the time that you 7 felt it would be worse? 8 A. I don't remember. 9 Q. Well, you said "first to feel the 10 effect." What does that mean? 11 MR. BASSMAN: Objection. 12 THE WITNESS: That's who would have 13 the new -- the entire benefits package first. 14 BY MR. SAUDER: 15 Q. Then you go on to state, "but stated 16 that this risk." 17 What did you mean by that? 18 A. You know, any time we make a change 19 with employees, you have a risk of them being 20 concerned and, so, just we knew that there would -- 21 any time like a major benefit package change you 22 are going to have unrest, and that's a risk and, 23 so, you have to manage it. 24 Q. And how did you plan on managing it?</p>	<p style="text-align: right;">Page 41</p> <p>1 A. You know, I don't remember that. 2 Q. The sentence goes on, "That this 3 risk could be managed in light of the cost savings 4 to be realized from the new program." 5 Do you see that? 6 A. Yes. 7 Q. Cost savings to be realized, I 8 assume that's cost savings for the company, 9 correct? 10 A. From the entire benefit program. 11 Q. Correct? 12 A. Yes. 13 Q. So the company was saving costs, 14 correct? 15 A. From the entire benefit program. 16 Q. And the cash balance was a part of 17 that benefit program? 18 A. But not from that part. 19 Q. The company wasn't saving money from 20 that? 21 A. No. 22 Q. Are you certain of that? 23 A. Yes. 24 Q. Why are you so certain of that?</p>

11 (Pages 38 to 41)

DONALD E. CAIN

<p style="text-align: right;">Page 42</p> <p>1 A. Because the one thing that's very 2 clear to me is that, from the very beginning, our 3 direction was that the implementation of the Cash 4 Balance Plan was to be cost neutral to the company. 5 Q. And that was, I assume, conveyed to 6 the employees? 7 A. I assume it was -- you are assuming 8 it was. You can assume that. I don't know that. 9 Q. Okay. 10 A. I believe it would have been. 11 Q. What do you base that belief on? 12 A. Just because we had a commitment to 13 communicate facts to employees. 14 Q. Okay. 15 But, overall, the benefits plan was 16 a cost savings to the company, correct? 17 A. It may have been. It says it was. 18 May have been. 19 I don't remember exactly. 20 Q. Okay. 21 A. But I know it wasn't in the Cash 22 Balance Plan. 23 Q. On next page, if you look at the 24 paragraph that starts, "Mr. Wilkinson," it states</p>	<p style="text-align: right;">Page 44</p> <p>1 MR. BASSMAN: Objection. 2 BY MR. SAUDER: 3 Q. You can answer, sir. 4 A. I don't know that it's anybody 5 specific. 6 Q. Were you being included in that? 7 MR. BASSMAN: Objection. 8 THE WITNESS: Well, I was part of 9 the management of the company. 10 BY MR. SAUDER: 11 Q. Would Mr. Wilkinson be included in 12 that? 13 MR. BASSMAN: Objection. 14 THE WITNESS: I think that's a 15 general term. 16 BY MR. SAUDER: 17 Q. Next paragraph that starts out, 18 "First," last sentence in that paragraph states, 19 "The cash balance design is viewed as more 20 appropriate for attracting and retaining employees 21 in a more mobile and independent workforce." 22 Do you see that? 23 A. Yes, correct. 24 Q. Do you know at that time the average</p>
<p style="text-align: right;">Page 43</p> <p>1 "Mr. Wilkinson stated that the long-term goal of 2 management was to have the overall benefit cost at 3 35 to 36 percent of pay" -- 4 A. Yes. 5 Q. -- "which is the general industry 6 standard. He then reviewed the details of the 7 program on a plan-by-plan basis specifically," and 8 then it goes on. 9 Do you see that? 10 A. Um-hum. 11 Q. Do you know where that 35 to 12 36 percent number came from? 13 A. I have no idea. 14 Q. Do you know if that was an increase 15 or a decrease to the existing structure? 16 A. I don't know. 17 Q. Next paragraph states, "Management 18 of the company recommends that the Compensation 19 Committee approve the adoption of a Cash Balance 20 Pension Plan." 21 Do you see that? 22 A. Yes. 23 Q. Management of the company, who is 24 that referring to specifically?</p>	<p style="text-align: right;">Page 45</p> <p>1 age of the employees at ACE? 2 A. No. 3 Q. How about at Delmarva? 4 A. No. 5 Q. Do you know the average length of 6 the employment of the employees at Delmarva at that 7 time? 8 A. No. 9 Q. How about at ACE? 10 A. No. 11 Q. Go down to the paragraph that starts 12 out, "Third, management recommends that a 13 competitive package of welfare plans," and that 14 sentence goes on. 15 A. Yes. 16 Q. It lists a bunch of benefits, 17 including medical, prescription, dental, vision, 18 life insurance, accidental death, dismemberment 19 coverage, and choice rewards, which include prepaid 20 legal, cancer insurance and other nontraditional 21 choices." 22 Do you see that? 23 A. Right. 24 Q. Are these all new benefits that were</p>

12 (Pages 42 to 45)



DONALD E. CAIN

<p style="text-align: right;">Page 46</p> <p>1 taking place at Conectiv at that time?</p> <p>2 A. I'd only be presuming. I don't know</p> <p>3 that for a fact.</p> <p>4 Q. Do you know that the entire benefit</p> <p>5 package was being overhauled at the time of the</p> <p>6 merger?</p> <p>7 A. I know that.</p> <p>8 Q. You mentioned earlier that there</p> <p>9 were layoffs. Were there layoffs at the time of</p> <p>10 the merger?</p> <p>11 A. I don't remember.</p> <p>12 Probably -- I'm going to say</p> <p>13 probably.</p> <p>14 Q. Do you know if there were a lot of</p> <p>15 layoffs happening at the time of the merger?</p> <p>16 A. I don't remember how many.</p> <p>17 Q. Do you know if a lot of people were</p> <p>18 leaving because they were given severance packages?</p> <p>19 A. People left for severance packages,</p> <p>20 yes.</p> <p>21 Q. Voluntary and involuntary severance</p> <p>22 packages?</p> <p>23 A. I don't remember exactly.</p> <p>24 Q. Well, at the time of the merger</p>	<p style="text-align: right;">Page 48</p> <p>1 plans and programs from time to time to maintain</p> <p>2 their competitiveness and respond to business and</p> <p>3 employee interests, subject to the responsibility</p> <p>4 of the committee and the Board of Directors with</p> <p>5 respect to material amendments to employee benefit</p> <p>6 plans."</p> <p>7 A. Um-hum.</p> <p>8 Q. Was that your title at that time,</p> <p>9 human resources and performance improvement?</p> <p>10 A. It must have been.</p> <p>11 Q. And were you able to make minor</p> <p>12 changes to the plan without approval by the board</p> <p>13 or the Compensation Committee?</p> <p>14 MR. BASSMAN: Objection. Which</p> <p>15 plan?</p> <p>16 BY MR. SAUDER:</p> <p>17 Q. The Cash Balance Plan.</p> <p>18 A. I don't remember that specifically.</p> <p>19 Q. And at this meeting you have no</p> <p>20 recollection what, if any, materials were presented</p> <p>21 to the Compensation Committee?</p> <p>22 A. No.</p> <p>23 Q. You have no specific recollection</p> <p>24 whether there was a draft of the plan in place at</p>
<p style="text-align: right;">Page 47</p> <p>1 Delmarva was merging with ACE, correct?</p> <p>2 A. Correct.</p> <p>3 Q. And ACE is Atlantic City Electric?</p> <p>4 A. Yes.</p> <p>5 Q. And I assume there was a lot of</p> <p>6 overlap with the jobs?</p> <p>7 A. Yes, there was.</p> <p>8 Q. So Conectiv had to lay people off?</p> <p>9 A. Yes, but the question you asked me</p> <p>10 was about voluntary/involuntary.</p> <p>11 Q. Right.</p> <p>12 A. I can't remember the split of that.</p> <p>13 There may have been no involuntary. It may have</p> <p>14 been all voluntary.</p> <p>15 Q. You are just not certain either way?</p> <p>16 A. I'm just not certain either way.</p> <p>17 Q. If you flip to the next page, that's</p> <p>18 Bates 1586 --</p> <p>19 A. Okay.</p> <p>20 Q. -- the second full paragraph down</p> <p>21 that says, "Mr. Cain referred specifically to one</p> <p>22 of the resolutions before the committee that</p> <p>23 permits the vice-president of human resources and</p> <p>24 performance improvement to make changes in benefit</p>	<p style="text-align: right;">Page 49</p> <p>1 that time?</p> <p>2 A. No.</p> <p>3 Q. No specific recollection?</p> <p>4 A. No.</p> <p>5 Q. If you flip to the attachment,</p> <p>6 ending Bates 1589 --</p> <p>7 A. Okay.</p> <p>8 Q. -- do you see that? At the bottom</p> <p>9 of that, in bold, it says "Cash Balance Pension</p> <p>10 Plan"?</p> <p>11 A. Yes.</p> <p>12 Q. It says, "Extensive grandfathering."</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. When did grandfathering become an</p> <p>16 issue, that grandfathering would somehow be part of</p> <p>17 the Cash Balance Plan?</p> <p>18 A. I don't know that specifically.</p> <p>19 Q. Do you know who that was suggested</p> <p>20 by?</p> <p>21 A. No, I don't.</p> <p>22 Q. Did you play a role in making that</p> <p>23 decision?</p> <p>24 A. I probably played a role in</p>

13 (Pages 46 to 49)

DONALD E. CAIN

<p style="text-align: right;">Page 50</p> <p>1 discussing that decision.</p> <p>2 Q. Do you know who else would have</p> <p>3 played a role?</p> <p>4 A. No.</p> <p>5 Q. And were people grandfathered</p> <p>6 because you expected some employees to accrue less</p> <p>7 under the Cash Balance Plan?</p> <p>8 A. That wouldn't be my recollection.</p> <p>9 Q. What was your recollection of why</p> <p>10 people were grandfathered?</p> <p>11 A. Because everyone starts accruing</p> <p>12 almost immediately under a Cash Balance Plan, and,</p> <p>13 therefore, you are increasing the benefit for some</p> <p>14 folks and you can't have everybody have both, so</p> <p>15 you had to pick some point where folks wouldn't</p> <p>16 have access to the old plan.</p> <p>17 Q. What do you mean you couldn't have</p> <p>18 everyone having --</p> <p>19 A. Couldn't have both plans. Wouldn't</p> <p>20 work and be cost neutral.</p> <p>21 Q. But you could have allowed current</p> <p>22 employees to choose between the plans?</p> <p>23 A. I don't -- I don't believe that was</p> <p>24 an option.</p>	<p style="text-align: right;">Page 52</p> <p>1 answered several times. I didn't get an answer to</p> <p>2 it.</p> <p>3 THE WITNESS: I don't remember any</p> <p>4 of that discussion.</p> <p>5 BY MR. SAUDER:</p> <p>6 Q. I'm not saying there was a</p> <p>7 discussion. I'm saying, it could have happened.</p> <p>8 A. I don't know. I don't know. I</p> <p>9 mean, I'm not an expert, and it was ten years ago.</p> <p>10 Q. You were grandfathered?</p> <p>11 A. Yes.</p> <p>12 Q. Did you have a choice between the</p> <p>13 Cash Balance Plan and the old plan?</p> <p>14 A. Yes.</p> <p>15 Q. You did?</p> <p>16 A. I believe I did. That's what I</p> <p>17 think grandfathering did.</p> <p>18 Q. So you were grandfathered, and then</p> <p>19 when you retired did you take your money from the</p> <p>20 old plan?</p> <p>21 A. Yes.</p> <p>22 Q. Why is that?</p> <p>23 A. Because it was better for me.</p> <p>24 Q. Do you know what percentage of</p>
<p style="text-align: right;">Page 51</p> <p>1 Q. But you could have?</p> <p>2 A. I don't know that.</p> <p>3 Q. What do you mean you don't know</p> <p>4 that?</p> <p>5 A. I don't know that's something we</p> <p>6 could have done.</p> <p>7 Q. Why is that?</p> <p>8 A. I just don't remember.</p> <p>9 Q. Based on cost?</p> <p>10 A. I don't remember that, either.</p> <p>11 MR. BASSMAN: Objection.</p> <p>12 THE WITNESS: I mean, I remember</p> <p>13 nothing about that decision, other than I</p> <p>14 understood we needed some point where folks would</p> <p>15 be in one plan and some point after which folks</p> <p>16 would be in either plan.</p> <p>17 BY MR. SAUDER:</p> <p>18 Q. But I'm saying the company, itself,</p> <p>19 could have, if they wanted to, allowed employees to</p> <p>20 choose between the Cash Balance Plan or keeping the</p> <p>21 old defined benefits plan?</p> <p>22 MR. BASSMAN: Objection. Asked and</p> <p>23 answered several times.</p> <p>24 MR. SAUDER: That wasn't asked and</p>	<p style="text-align: right;">Page 53</p> <p>1 employees that had the choice between taking money</p> <p>2 from the old plan and the new plan took money from</p> <p>3 the old plan?</p> <p>4 A. No.</p> <p>5 Q. Look at that one bullet there. It</p> <p>6 says, "Improved employee communication."</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. What's your understanding of what</p> <p>10 that means?</p> <p>11 MR. BASSMAN: Objection.</p> <p>12 THE WITNESS: I don't remember.</p> <p>13 BY MR. SAUDER:</p> <p>14 Q. Showing you what has been previously</p> <p>15 marked as Defense Exhibit 6. Ask you to take a</p> <p>16 look at this document and let me know if you've</p> <p>17 seen this document prior to today.</p> <p>18 A. Unless -- if you mean, you know,</p> <p>19 back in 1998, I may have seen it. I haven't seen</p> <p>20 it since then.</p> <p>21 Q. But you have no specific</p> <p>22 recollection of seeing it even back in 1998?</p> <p>23 A. No.</p> <p>24 Q. No recollection of seeing this</p>

14 (Pages 50 to 53)

DONALD E. CAIN

<p style="text-align: right;">Page 54</p> <p>1 document prior to me putting it in front of you, 2 correct? 3 A. No. 4 Q. Fair to say you have no recollection 5 whether you participated in preparing this 6 document? 7 A. None. 8 Q. No recollection of whether this was 9 communicated to employees? 10 A. Not specifically. 11 Q. Do you know who was in charge of 12 employee communications at that time? 13 MR. BASSMAN: The time being 14 December 21, 1998? 15 MR. SAUDER: Yes. 16 THE WITNESS: I don't specifically 17 remember that. 18 BY MR. SAUDER: 19 Q. Do you know at that time -- when I 20 say "at that time," I mean December of 1998 -- 21 whether you had a desktop computer in your office? 22 A. I can't -- I don't remember. I'm 23 going to say probably. 24 Q. Fair to say you have no idea</p>	<p style="text-align: right;">Page 56</p> <p>1 corner, "Electronic InSight." 2 Do you know what that means? 3 A. I don't remember. 4 Q. And then it says, "To all" -- do you 5 see where it says "To" in the upper right-hand 6 corner? 7 A. Okay. 8 Q. Do you know who that is referencing 9 in that "To" line? 10 A. No. 11 Q. It says, "Conectiv public affairs 12 person, Larry Boehm." 13 Do you know who that person is? 14 A. I don't remember. 15 Q. Do you know of a Conectiv public 16 affairs title? 17 A. It's on the paper. 18 Q. But you don't specifically have any 19 recollection of what that person did? 20 A. No. 21 Q. And you don't know that person? 22 A. I'm not recollecting anybody. 23 Q. The last paragraph in that document 24 that starts out, "If there are Conectiv management</p>
<p style="text-align: right;">Page 55</p> <p>1 whether -- what portion of the other nonrepresented 2 management employees also would have had a desktop 3 computer? 4 A. I have no idea. 5 Q. Do you know whether all of the 6 nonrepresented management employees had E-Mail 7 accounts at that time? 8 A. I don't know. 9 Q. Do you know if you did? Company 10 E-Mail account? 11 A. '98? 12 Q. Yes. 13 A. I would say I did. 14 MR. SAUDER: Show you what we'll 15 have marked as Plaintiffs' Exhibit 18. 16 (Exhibit P-18 is marked for 17 identification.) 18 BY MR. SAUDER: 19 Q. Showing you what's been marked as 20 Plaintiffs' Exhibit 18. If you could take a look 21 at that document and let me know if you've seen it 22 prior to today. 23 A. No recollection of it. 24 Q. It says, up in the upper left-hand</p>	<p style="text-align: right;">Page 57</p> <p>1 employees in your area who do not have E-Mail, 2 please print each a copy of each of these important 3 documents." 4 Do you see that? 5 A. Yes. 6 Q. Does that refresh your recollection 7 that all management employees did not have E-Mail 8 at the time? 9 A. No. 10 Q. Fair to say you have no recollection 11 whether all the management employees received a 12 copy of this document? 13 A. That's correct. 14 Q. And you have no recollection of 15 receiving a copy of this document? 16 A. No. 17 Q. Showing you what has been previously 18 marked as Defense Exhibit 5. 19 Sir, before you look at that 20 document, when you said that you were grandfathered 21 and you took the money under the old plan instead 22 of the Cash Balance Plan -- 23 A. Correct. 24 Q. -- because it was better for you,</p>

15 (Pages 54 to 57)

DONALD E. CAIN

<p style="text-align: right;">Page 58</p> <p>1 correct?</p> <p>2 A. Yes.</p> <p>3 Q. Better for you because you were able</p> <p>4 to take more money out of the old plan, correct?</p> <p>5 A. My benefit was better when I retired</p> <p>6 under the old plan.</p> <p>7 Q. More money, correct?</p> <p>8 A. My benefit was better. Yes, more</p> <p>9 money.</p> <p>10 Q. Sir, if you look at what's</p> <p>11 previously been marked as Defense Exhibit 5.</p> <p>12 A. Okay.</p> <p>13 Q. And these pages are out of order --</p> <p>14 A. Okay.</p> <p>15 Q. -- as it was originally marked. The</p> <p>16 second page is 3 and then the next page is 2, but</p> <p>17 if you'd just take a look at this document and let</p> <p>18 me know if you've seen this document prior to</p> <p>19 today.</p> <p>20 A. No.</p> <p>21 Q. Are you familiar with a document</p> <p>22 entitled "Facts" while you were at Conectiv?</p> <p>23 A. No.</p> <p>24 Q. Fair to say you have no idea whether</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. You don't know if that communication</p> <p>2 went to anybody, correct?</p> <p>3 A. I don't know if this specific one</p> <p>4 went to anyone.</p> <p>5 Q. Okay.</p> <p>6 A. You keep asking me about this, but I</p> <p>7 will tell you that I do know that there was many,</p> <p>8 many, many communications that were made on an</p> <p>9 ongoing basis in newsletters, in E-Mails, in hard</p> <p>10 documents, to communicate all the information that</p> <p>11 we could give employees to help them understand the</p> <p>12 changes that were being made.</p> <p>13 You keep asking me if I remember</p> <p>14 this document. I don't remember this specific</p> <p>15 document. It's ten years ago.</p> <p>16 Q. I'm showing you the document that we</p> <p>17 received from your counsel.</p> <p>18 A. Okay.</p> <p>19 Q. That's why I'm asking you.</p> <p>20 A. I don't remember.</p> <p>21 Q. You just said the ongoing</p> <p>22 communications you -- as you sit here, you have no</p> <p>23 specific recollection on how anything was</p> <p>24 communicated --</p>
<p style="text-align: right;">Page 59</p> <p>1 you participated in preparing this document?</p> <p>2 A. Not at this point.</p> <p>3 Q. No idea who prepared this document?</p> <p>4 A. No.</p> <p>5 Q. No idea whether this document was</p> <p>6 communicated to employees?</p> <p>7 A. No.</p> <p>8 Q. Sir, if you look at the bottom of</p> <p>9 the first page, it states, "New Cash Balance Plan"</p> <p>10 in bold.</p> <p>11 A. Yes.</p> <p>12 Q. "New Cash Balance Pension Plan."</p> <p>13 Second sentence then says, "The Cash Balance</p> <p>14 Pension Plan is a new concept that has two</p> <p>15 important advantages. It's easier to understand</p> <p>16 than the former plan."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. And was that something that you saw</p> <p>20 as an advantage?</p> <p>21 A. Sure.</p> <p>22 Q. Was that something you communicated</p> <p>23 to employees?</p> <p>24 A. It's in this communication.</p>	<p style="text-align: right;">Page 61</p> <p>1 A. Not of specific vehicles or names or</p> <p>2 issues, no, I don't.</p> <p>3 Q. And you have no idea how any of that</p> <p>4 was communicated to employees, correct?</p> <p>5 A. Any of what?</p> <p>6 Q. Any of what you just said?</p> <p>7 A. I just said, through a variety of</p> <p>8 vehicles. Newsletters, personal mailings,</p> <p>9 meetings, all kinds of different ways. There was</p> <p>10 communications ongoing all the time.</p> <p>11 You want to know about specific</p> <p>12 ones. I can't answer that question.</p> <p>13 Q. These are the only ones your counsel</p> <p>14 gave us, sir.</p> <p>15 A. Well --</p> <p>16 MR. BASSMAN: Objection. Arguing</p> <p>17 with the witness.</p> <p>18 BY MR. SAUDER:</p> <p>19 Q. So, when you say newsletters, how</p> <p>20 were the newsletters -- were they disseminated in a</p> <p>21 way that they may be laying around the company for</p> <p>22 employees to pick up?</p> <p>23 A. I don't know if they were handed out</p> <p>24 or put in places to be picked up.</p>

16 (Pages 58 to 61)

DONALD E. CAIN

<p style="text-align: right;">Page 62</p> <p>1 Q. And E-Mails, you said that there was</p> <p>2 communications by E-Mails?</p> <p>3 A. To my recollection there were.</p> <p>4 Q. But you have no specific</p> <p>5 recollection?</p> <p>6 A. Not a specific recollection of any</p> <p>7 given specific communication.</p> <p>8 Q. How else would things have been</p> <p>9 communicated to employees?</p> <p>10 A. Meetings.</p> <p>11 Q. And would you have had employees</p> <p>12 sign in at meetings?</p> <p>13 A. I don't remember.</p> <p>14 Q. Would you think not?</p> <p>15 A. I wouldn't think -- no, I don't</p> <p>16 think not; I just don't remember.</p> <p>17 Q. How else would communications be --</p> <p>18 how else would these issues be communicated to</p> <p>19 employees?</p> <p>20 A. Company newsletters.</p> <p>21 Q. Right, we talked about that.</p> <p>22 A. Yes. Maybe direct mailings.</p> <p>23 Q. But you are not certain?</p> <p>24 A. Well, you know, I am certain that I</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. Beyond that, you don't know who else</p> <p>2 would have received whatever you are talking about,</p> <p>3 correct?</p> <p>4 A. No.</p> <p>5 Q. Sir, I'm showing you what has been</p> <p>6 previously marked as Plaintiffs Exhibit 3. If you</p> <p>7 could take a look at that document and let me know</p> <p>8 if you've seen that prior to today.</p> <p>9 A. No.</p> <p>10 Q. Haven't seen that?</p> <p>11 A. No.</p> <p>12 Q. Fair to say you have no recollection</p> <p>13 of helping prepare this document?</p> <p>14 A. Correct.</p> <p>15 Q. No idea who prepared this document?</p> <p>16 A. Correct.</p> <p>17 Q. No idea whether it was disseminated</p> <p>18 to employees?</p> <p>19 A. Correct.</p> <p>20 Q. Sir, if you flip to the page that's</p> <p>21 Bates ends 231.</p> <p>22 A. Okay.</p> <p>23 Q. See at the bottom there, in bold, it</p> <p>24 says, "Transition issues"?</p>
<p style="text-align: right;">Page 63</p> <p>1 got a direct mailing at some time about my cash</p> <p>2 balance -- you know, about my Cash Balance Plan.</p> <p>3 Q. And what did that -- what was that</p> <p>4 communication?</p> <p>5 A. I don't remember, but I remember</p> <p>6 getting it.</p> <p>7 Q. Do you still have it?</p> <p>8 A. No.</p> <p>9 Q. Did you look for it?</p> <p>10 A. No.</p> <p>11 Q. You didn't look for it?</p> <p>12 A. No.</p> <p>13 Q. You may have it?</p> <p>14 A. I don't think so.</p> <p>15 Q. That was one of the things that we</p> <p>16 requested that you look for, so I would ask that</p> <p>17 you -- if you could again look for any</p> <p>18 communications you may have regarding the requests</p> <p>19 that we made, okay?</p> <p>20 A. Yes.</p> <p>21 Q. You say you have no recollection of</p> <p>22 getting some direct mailing regarding a Cash</p> <p>23 Balance Plan, correct?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 65</p> <p>1 A. Okay.</p> <p>2 Q. And then the last sentence there</p> <p>3 says, "The transition rules will be designed to be</p> <p>4 fair to all employees and sensitive to the concerns</p> <p>5 of various groups affected, from new employees to</p> <p>6 those who are approaching retirement age."</p> <p>7 Do you see that, sir?</p> <p>8 A. Yes.</p> <p>9 Q. Where it says "The transition rules</p> <p>10 will be designed to be fair to all employees," from</p> <p>11 your recollection, not just this specific document,</p> <p>12 was that something that the company was trying to</p> <p>13 convey to nonrepresented management employees at</p> <p>14 the time?</p> <p>15 A. It's in this document. I assume it</p> <p>16 was.</p> <p>17 Q. Flip to the next page. Ends in</p> <p>18 Bates 232.</p> <p>19 A. Okay.</p> <p>20 Q. The last sentence of that first</p> <p>21 paragraph states, "In the meanwhile, please</p> <p>22 continue to address any questions we may be able to</p> <p>23 answer to your manager."</p> <p>24 A. Yes.</p>

17 (Pages 62 to 65)



DONALD E. CAIN

<p style="text-align: right;">Page 66</p> <p>1 Q. Do you see that?</p> <p>2 At that time do you know how</p> <p>3 "manager" was being defined?</p> <p>4 MR. BASSMAN: Objection.</p> <p>5 BY MR. SAUDER:</p> <p>6 Q. You can answer, sir.</p> <p>7 A. Well, I can only speculate. Your</p> <p>8 immediate supervisor.</p> <p>9 Q. And do you know whether the managers</p> <p>10 that are referenced in this document were -- had</p> <p>11 any special knowledge regarding the Cash Balance</p> <p>12 Plan at that time?</p> <p>13 MR. BASSMAN: Objection.</p> <p>14 BY MR. SAUDER:</p> <p>15 Q. Whatever time that may have been?</p> <p>16 MR. BASSMAN: Objection.</p> <p>17 THE WITNESS: I can't say.</p> <p>18 BY MR. SAUDER:</p> <p>19 Q. Prior to the implementation of the</p> <p>20 Cash Balance Plan, did the managers have any</p> <p>21 special knowledge or were they given any special</p> <p>22 knowledge regarding the Cash Balance Plan?</p> <p>23 A. I don't know that.</p> <p>24 Q. You don't know?</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. Take a look through and let me know</p> <p>2 if you agree this is the retirement plan for</p> <p>3 Conectiv including the Cash Balance Sub-Plan.</p> <p>4 MR. BASSMAN: Clarification. When</p> <p>5 you say this is the entire plan including --</p> <p>6 MR. SAUDER: I didn't say entire</p> <p>7 plan. I said, this is the plan -- Conectiv's</p> <p>8 retirement plan, including the Cash Balance</p> <p>9 Sub-Plan.</p> <p>10 MR. BASSMAN: Objection.</p> <p>11 THE WITNESS: I wouldn't know. The</p> <p>12 cover says it is. That's all I know.</p> <p>13 BY MR. SAUDER:</p> <p>14 Q. If you look at the Bates that ends</p> <p>15 in 484, do you see that?</p> <p>16 A. Okay.</p> <p>17 Q. Second paragraph, if you would just</p> <p>18 read that to yourself and let me know if you agree</p> <p>19 this includes the Cash Balance Plan.</p> <p>20 MR. BASSMAN: Objection.</p> <p>21 THE WITNESS: I don't -- I just -- I</p> <p>22 have no recollection. I don't even know what all</p> <p>23 that language means at this point.</p> <p>24 BY MR. SAUDER:</p>
<p style="text-align: right;">Page 67</p> <p>1 A. No.</p> <p>2 Q. And, when I say "at the time," this</p> <p>3 document is not dated, correct?</p> <p>4 A. I don't see one.</p> <p>5 You tell me.</p> <p>6 Q. You don't see a date, correct?</p> <p>7 A. No, I don't see a date.</p> <p>8 Q. All right.</p> <p>9 Sir, if at any point you need a</p> <p>10 break, just let me know.</p> <p>11 A. I'm good. Does anyone else need a</p> <p>12 break?</p> <p>13 Q. Sir, again showing you what's been</p> <p>14 previously marked Plaintiffs' Exhibit 9, if you</p> <p>15 could take a look at that document and let me know</p> <p>16 if you've seen that document prior to today.</p> <p>17 A. I don't remember.</p> <p>18 Oh, I -- if you are asking, did I</p> <p>19 see it back in whatever year this was dated, I</p> <p>20 can't -- I don't remember.</p> <p>21 Have I seen it since then? No.</p> <p>22 Q. This was the retirement plan for</p> <p>23 Conectiv, correct, sir?</p> <p>24 A. That's what it says.</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. Sir, if you flip to the last page,</p> <p>2 ends in 520.</p> <p>3 A. Yes.</p> <p>4 Q. Read that page there and let me know</p> <p>5 when you've had an opportunity to read that.</p> <p>6 A. Yes.</p> <p>7 Q. And is that your signature at the</p> <p>8 bottom of the page?</p> <p>9 A. Yes, it is.</p> <p>10 Q. This is dated December 10, 1999,</p> <p>11 correct?</p> <p>12 A. Correct.</p> <p>13 Q. That's when you signed that page?</p> <p>14 A. It's -- yes.</p> <p>15 Q. And your signature is, if you look</p> <p>16 at the top there, certifying that you approve the</p> <p>17 adoption of the Conectiv retirement plan, correct?</p> <p>18 A. Yes.</p> <p>19 Q. Do you know if you played a role in</p> <p>20 preparing this document?</p> <p>21 MR. BASSMAN: Objection. Which</p> <p>22 document? This one page?</p> <p>23 MR. SAUDER: No. This entire</p> <p>24 document, Plaintiffs' Exhibit 9.</p>

18 (Pages 66 to 69)

DONALD E. CAIN

<p style="text-align: right;">Page 70</p> <p>1 THE WITNESS: Not in preparing it.  2 BY MR. SAUDER:  3 Q. Sir, I want to show you what's been  4 previously marked as Plaintiffs' Exhibit 10.  5 Have you seen this document prior to  6 today?  7 A. If you mean 1999, probably.  8 Q. Okay.  9 A. If you mean since then, any time in  10 the last five years, no.  11 MR. BASSMAN: You should probably  12 take a look towards the back of the document.  13 There seems to be something dated after '99.  14 THE WITNESS: It's -- but I still  15 don't -- I mean, I don't remember. So, unless I'm  16 going to spend hours going through, which --  17 BY MR. SAUDER:  18 Q. Sir, the title of this document on  19 the front page, "Part One Conectiv Cash Balance  20 Sub-Plan," do you see that?  21 A. Yes.  22 Q. Do you know if you played any role  23 in preparing this document?  24 A. Probably not.</p>	<p style="text-align: right;">Page 72</p> <p>1 Q. And that's your signature there?  2 A. Yes.  3 Q. Do you know what you were doing by  4 signing this particular page?  5 A. No, I don't.  6 Q. Are you amending the retirement plan  7 of February of '01, as it says at the top?  8 A. That's what the page says.  9 Q. And did you have the authority to  10 amend the plan?  11 A. I don't remember.  12 Q. Were you the one who signed off on  13 the amendment?  14 A. Yes.  15 Q. And per the previous page, 1570, you  16 were the one who signed off ultimately on the  17 adoption of the plan?  18 A. Yes, correct.  19 MR. BASSMAN: Objection.  20 THE WITNESS: Pursuant to the Comp  21 Committee's approval of the plan.  22 BY MR. SAUDER:  23 Q. Correct.  24 Same thing on 1573. Page is titled</p>
<p style="text-align: right;">Page 71</p> <p>1 Q. Why do you say that?  2 A. Because I wouldn't have had the time  3 to prepare this document.  4 Q. If you flip to Bates PHI15 -- ends  5 1570, toward the back portion of the document.  6 A. Okay.  7 Q. That's your signature, correct?  8 A. Yes.  9 Q. That's also dated December 10, 1999?  10 A. Correct.  11 Q. That's when you would have signed  12 it, correct?  13 A. Yes.  14 Q. Your signature is indicating you are  15 adopting the plan, correct?  16 A. Yes.  17 Q. If you flip to the next page --  18 A. Okay.  19 Q. -- PHI 1571 --  20 A. Okay.  21 Q. -- the date on there looks to be  22 January -- I can't make out the number, but  23 January, '01. Do you see that?  24 A. Yes.</p>	<p style="text-align: right;">Page 73</p> <p>1 "Clarifying Amendment to Conectiv Retirement Plan,"  2 and then under that it states "Conectiv Cash  3 Balance Sub-Plan, October, 2000."  4 You signed that page?  5 A. Yes, that's my signature.  6 Q. You signed on October 1st, 2000,  7 correct?  8 A. Correct.  9 Q. And you are -- your signature is  10 indicating there is an amendment to the plan?  11 A. That's what the page says.  12 Q. Sir, I'm showing you what's  13 previously been marked as Defense Exhibit 9. If  14 you could take a look at that document and let me  15 know if you've seen it prior to today.  16 A. No.  17 Q. You haven't seen that prior to  18 today?  19 A. May have seen it in 1999 when it was  20 distributed, but not since then.  21 Q. Do you have any specific knowledge  22 that it was distributed?  23 A. No specific knowledge.  24 Q. Do you have any -- have you ever</p>

19 (Pages 70 to 73)

DONALD E. CAIN

<p style="text-align: right;">Page 74</p> <p>1 seen this document entitled "InSight" while you 2 were at Conectiv? 3 A. Probably, based on the title of this 4 document. 5 Q. Do you have any specific 6 recollection of seeing documents entitled 7 "InSight"? 8 A. No. 9 Q. Fair to say you have no specific 10 recollection of how these documents would have been 11 distributed? 12 A. None. 13 Q. Flip to the second page. Bates ends 14 3429. Do you see that? 15 A. Yes. 16 Q. At the top it says "Jim Kremmel." 17 Do you know who Jim Kremmel is? 18 A. Yes. 19 Q. And what was his role in March of 20 1999? 21 A. I don't remember. 22 Q. If you go down where it says, 23 "July/August, Cash Balance Pension Plan Meetings 24 for Employees" in bold.</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. That would have included you? 2 A. Yes. 3 Q. There were 60 or 70 people in human 4 resources at the time? 5 A. I'm guessing. 6 Q. Roughly? 7 A. Roughly. 8 Q. And that's who you would have 9 included in that sentence? 10 A. In the way it's offered here, yes. 11 Q. Did all of the people in the human 12 resources team all, in some way, play a role in the 13 Cash Balance Plan? 14 A. Not -- other than -- other than 15 interfacing with employees when it was finally 16 implemented, like they would have any other 17 benefit. 18 Q. So they would have interfaced with 19 other employees? 20 A. Sure, and maybe not every single 21 employee, but the ones that had face-to-face 22 contact. 23 Q. What does that mean? 24 A. Well, not every HR -- some are</p>
<p style="text-align: right;">Page 75</p> <p>1 Do you see that? 2 A. Yes. 3 Q. Do you have any specific 4 recollection of meetings taking place in July or 5 August of 1999 regarding the Cash Balance Pension 6 Plan? 7 A. I can't remember specifics. 8 Q. It says, under that subheading, "The 9 human resources team and plan administrator, 10 Vanguard, will hold employee meetings across the 11 company to answer questions about the Cash Balance 12 Pension Plan." 13 Did you have any interaction with 14 Vanguard at or around that time? 15 A. I can't specifically remember. 16 Q. Do you remember having any 17 interaction with Vanguard regarding the Cash 18 Balance Plan? 19 A. I don't remember. 20 Q. When it says the "Human resources 21 team," do you know who that -- who would have been 22 involved in the human resources team at that time? 23 A. All 60 or 70 employees that worked 24 in human resources.</p>	<p style="text-align: right;">Page 77</p> <p>1 clerks and some are secretaries. Not all of them 2 would necessarily interface with employees on any 3 benefit. 4 Q. What portion of the 50 or 60 people 5 that were in HR at the time would have interfaced 6 with employees? 7 A. I have no idea. 8 Q. More than half? 9 A. Maybe. 10 Q. Next paragraph says, "The Vanguard 11 Group has been selected to be the administrator for 12 all pensions for management employees." 13 Did you play a role in that 14 selection? 15 A. I don't remember. 16 Q. Next sentence says, "After August 1, 17 pension questions should be directed to Vanguard. 18 Until then the Conectiv benefits team and the human 19 resource service center will continue to handle 20 pension-related issues." 21 Do you know who the Conectiv 22 benefits team was? 23 A. It would have been the whole 24 department.</p>

20 (Pages 74 to 77)



DONALD E. CAIN

<p style="text-align: right;">Page 78</p> <p>1 Q. The whole HR department?</p> <p>2 A. No. The whole comp and benefits</p> <p>3 department.</p> <p>4 Q. How big was that department at the</p> <p>5 time?</p> <p>6 A. I don't remember.</p> <p>7 Q. Larger than 50?</p> <p>8 A. No, not that many.</p> <p>9 Q. Larger than ten?</p> <p>10 A. Probably not.</p> <p>11 Q. Less than ten?</p> <p>12 A. Probably.</p> <p>13 Q. Next it says, "The human resource</p> <p>14 service center." What is that?</p> <p>15 A. It was a place for employees to call</p> <p>16 or go to get their questions answered about any of</p> <p>17 their benefits.</p> <p>18 Q. And that would be the human resource</p> <p>19 department?</p> <p>20 A. It would be within the human</p> <p>21 resource department.</p> <p>22 Q. How big was that department within</p> <p>23 the department?</p> <p>24 A. I don't know. I don't know.</p>	<p style="text-align: right;">Page 80</p> <p>1 Balance Pension Plan?</p> <p>2 A. No, not specifically.</p> <p>3 Q. Sir, showing you what's been marked</p> <p>4 as Defense Exhibit 10, I want you to have an</p> <p>5 opportunity to look at that document, I want you to</p> <p>6 let me know if you've seen it prior to today.</p> <p>7 A. I don't have any memory of it.</p> <p>8 Q. Look at the second paragraph of the</p> <p>9 document, second sentence says, as managers, please</p> <p>10 make sure that everyone who wishes to attend the</p> <p>11 information sessions is given the opportunity.</p> <p>12 What do you understand the term, "as</p> <p>13 managers," to mean?</p> <p>14 MR. BASSMAN: Objection.</p> <p>15 BY MR. SAUDER:</p> <p>16 Q. You can answer, sir.</p> <p>17 A. Management employees of the company.</p> <p>18 Q. So not all nonrepresented management</p> <p>19 employees? Are you differentiating that in some</p> <p>20 way?</p> <p>21 MR. BASSMAN: Objection.</p> <p>22 THE WITNESS: Explain your</p> <p>23 differentiation.</p> <p>24 BY MR. SAUDER:</p>
<p style="text-align: right;">Page 79</p> <p>1 Q. More than ten?</p> <p>2 A. Probably.</p> <p>3 Q. More than the 20?</p> <p>4 A. I don't know.</p> <p>5 Q. If people called the human resource</p> <p>6 service center and had a question regarding the</p> <p>7 Cash Balance Pension Plan would that in any way be</p> <p>8 noted by the human resource service center?</p> <p>9 A. I can only speculate. I don't know</p> <p>10 that.</p> <p>11 Q. But there was no plan that you know</p> <p>12 of that was implemented that, if someone called in,</p> <p>13 that it had to be written down and noted by the</p> <p>14 human resource center?</p> <p>15 A. There was some type of a computer</p> <p>16 system for them to use to keep track of issues that</p> <p>17 they dealt with.</p> <p>18 Q. But would that deal with just</p> <p>19 general issues or would that be with every single</p> <p>20 call that came in they would have to log into a</p> <p>21 computer somewhere?</p> <p>22 A. I don't know.</p> <p>23 Q. Do you remember attending any</p> <p>24 meetings around July, 1999 regarding the Cash</p>	<p style="text-align: right;">Page 81</p> <p>1 Q. Well, this document, is it fair to</p> <p>2 say, relates to the Cash Balance Pension Plan?</p> <p>3 A. Correct.</p> <p>4 Q. Who ultimately went into the Cash</p> <p>5 Balance Pension Plan?</p> <p>6 A. Management employees.</p> <p>7 Q. Nonunion?</p> <p>8 A. Or nonrepresented employees.</p> <p>9 Q. Management employees?</p> <p>10 A. Yes.</p> <p>11 Q. Differentiate that group from what</p> <p>12 you just said when I asked you what does as</p> <p>13 managers -- what does that mean?</p> <p>14 A. Yes.</p> <p>15 Q. And how?</p> <p>16 A. These would be -- generally managers</p> <p>17 who had some supervisory responsibility, I believe</p> <p>18 as it's used here.</p> <p>19 Q. Fair to say you have no recollection</p> <p>20 whether you helped prepare this document?</p> <p>21 A. No.</p> <p>22 Q. No recollection of who prepared this</p> <p>23 document?</p> <p>24 A. No.</p>

21 (Pages 78 to 81)

DONALD E. CAIN

<p style="text-align: right;">Page 82</p> <p>1 Q. You have no recollection of whether 2 this document was disseminated to employees? 3 A. No. 4 Q. Do you have any recollection of 5 informational meetings taking place around July, 6 1999 regarding the Cash Balance Plan? 7 A. Not specifically. 8 Q. The next paragraph says, "These 9 meetings will be the best source of information on 10 the plan and employees' opening balances." 11 Do you agree with that statement? 12 A. I probably agreed with it at the 13 time. 14 Q. Okay. 15 Next sentence says, "Recent stories 16 in the national media have raised concerns about 17 some Cash Balance Plans that do not offer the same 18 level of financial security or grandfathering 19 provisions as the Conectiv Cash Balance Pension 20 Plan." 21 Do you see that? 22 A. Yes. 23 Q. Do you know what that is referring 24 to?</p>	<p style="text-align: right;">Page 84</p> <p>1 It says that Towers was the 2 consulting firm that will act as the actuary. 3 Do you have any recollection who you 4 dealt with at Towers? 5 A. Dealt with a lot of folks over the 6 years, so -- 7 Q. Do you know who the primary contact 8 would have been regarding the Cash Balance Plan? 9 A. I couldn't say with certainty, 10 without going back and checking. 11 Q. The last paragraph on that page 12 states, "If you or your employees have any 13 questions after receiving the opening statements, 14 please hold them until the meetings where experts 15 will be available to respond. 16 Do you see that? 17 A. Yes. 18 Q. What is meant by your employees in 19 that sentence? What is your understanding of what 20 that means? 21 MR. BASSMAN: Objection. 22 THE WITNESS: I think we've answered 23 that. 24 BY MR. SAUDER:</p>
<p style="text-align: right;">Page 83</p> <p>1 A. I believe it's referring to articles 2 that probably have been written in the newspaper 3 about Cash Balance Plans, and the Conectiv plan 4 from the beginning was to be a cost-neutral plan, 5 so it had a lot of good benefits in it and 6 transition things that other plans didn't have. We 7 wanted to make sure employees knew that. 8 Q. Knew that the Conectiv plan was 9 different than what was in the national media? 10 A. Yes, that's correct. 11 Q. And, in fact, the next sentence 12 states, "One part of the presentation will address 13 these concerns and demonstrate how Conectiv's plan 14 is different." 15 A. Correct. 16 Q. And you agree with that statement? 17 A. Yes -- well, I agree with it -- I'll 18 qualify it. Because I don't remember exactly what 19 plans were in the national media, so I have to just 20 rely on the fact that this is in here and, so, 21 whatever plans were in there -- in the national 22 media, that's what we were comparing it to. If you 23 ask me today, I couldn't tell you. 24 Q. Right.</p>	<p style="text-align: right;">Page 85</p> <p>1 Q. The same thing, it would be 2 supervisors of the nonrepresented management 3 employees? 4 A. You asked me the question about 5 managers. 6 Q. Right. 7 A. Who this was, seems like, it was 8 addressed to. 9 Q. Right. 10 A. So this is just a continuation of 11 that thought. 12 Q. Okay. 13 Flip to the next page, sir. 14 A. Okay. 15 Q. There is a list of what appear to be 16 meetings regarding the Conectiv Cash Balance Plan, 17 and states, "Voluntary informational meeting 18 schedule." 19 A. Correct. 20 Q. And then a list of dates and 21 locations. 22 Having looked at that, does that 23 refresh your recollection in any way whether you 24 attended any of those meetings?</p>

22 (Pages 82 to 85)

DONALD E. CAIN

<p style="text-align: right;">Page 86</p> <p>1 A. No.</p> <p>2 Q. Do you have any recollection, based</p> <p>3 on looking at that, of anything relating to the</p> <p>4 meetings at that time?</p> <p>5 A. No.</p> <p>6 Q. So you wouldn't know who would have</p> <p>7 attended from Conectiv in order to convey the</p> <p>8 information?</p> <p>9 A. No.</p> <p>10 Q. And you wouldn't know whether</p> <p>11 employees signed in?</p> <p>12 A. No.</p> <p>13 Q. And you wouldn't know what</p> <p>14 information was conveyed?</p> <p>15 A. No.</p> <p>16 Q. Sir, showing you what's been</p> <p>17 previously marked as Plaintiffs' Exhibit 4, if you</p> <p>18 could take a look at that document and let me know</p> <p>19 if you've seen that document prior to today.</p> <p>20 A. It's the same answer of I've been</p> <p>21 saying. If you are asking me, did I see it back in</p> <p>22 1999, I probably did.</p> <p>23 Q. Okay.</p> <p>24 A. Have I seen it in preparation for</p>	<p style="text-align: right;">Page 88</p> <p>1 that?</p> <p>2 A. Yes.</p> <p>3 Q. I think this is what we were talking</p> <p>4 about in one of the previous documents, where it</p> <p>5 says, "Cash Balance Plans are controversial, a</p> <p>6 series of Wall Street Journal articles,</p> <p>7 Congressional hearings."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Is that the same thing that was</p> <p>11 referenced in D-10, the document we just looked at?</p> <p>12 A. It would only be speculation.</p> <p>13 Q. But do you assume that's the same</p> <p>14 thing?</p> <p>15 A. I don't have any information to</p> <p>16 assume that at this point.</p> <p>17 Q. Do you have any specific</p> <p>18 recollection of Wall Street Journal articles that</p> <p>19 discussed Cash Balance Plans around July of 1999?</p> <p>20 A. Not specifically, no.</p> <p>21 Q. The next bullet says, "Criticisms</p> <p>22 leveled at Cash Balance Plans," and one of them</p> <p>23 says, "Masks cost cutting."</p> <p>24 Do you see that?</p>
<p style="text-align: right;">Page 87</p> <p>1 today? No.</p> <p>2 Q. And subsequent to 1999 you would</p> <p>3 have no recollection of seeing it?</p> <p>4 A. Nope.</p> <p>5 Q. Do you know if you played any role</p> <p>6 in preparing this document?</p> <p>7 A. May have reviewed it.</p> <p>8 Q. But no specific recollection?</p> <p>9 A. No specific recollection.</p> <p>10 Q. You have no specific recollection as</p> <p>11 to who would have prepared this document?</p> <p>12 A. No.</p> <p>13 Q. Do you know what the purpose of this</p> <p>14 document is?</p> <p>15 A. No, I don't. Because, if I look at</p> <p>16 the first page, it looks like it has something to</p> <p>17 do with July.</p> <p>18 Q. Okay.</p> <p>19 If you go to the second page, Bates</p> <p>20 302?</p> <p>21 A. Okay.</p> <p>22 Q. That top slide up on the left-hand</p> <p>23 side that says, "Important perspective on</p> <p>24 Conectiv's new retirement program," do you see</p>	<p style="text-align: right;">Page 89</p> <p>1 A. Yes.</p> <p>2 Q. If you go down to the next slide</p> <p>3 below that, where it says, "Important perspectives</p> <p>4 on Conectiv's new retirement program," the first</p> <p>5 slide states, "New program not designed to provide</p> <p>6 cost savings for Conectiv."</p> <p>7 Do you see that?</p> <p>8 A. That is correct.</p> <p>9 Q. So, it's fair to say that the</p> <p>10 Conectiv Cash Balance Plan was not masking cost</p> <p>11 cutting, correct?</p> <p>12 A. Correct.</p> <p>13 Q. I think we talked about this</p> <p>14 previously. If you flip back to the top slide</p> <p>15 again, underneath "Masks cost cutting," it says</p> <p>16 "Poor handling of communication/transition."</p> <p>17 A. Correct.</p> <p>18 Q. Fair to say that Conectiv -- that</p> <p>19 that doesn't apply to the Conectiv Cash Balance</p> <p>20 Plan?</p> <p>21 A. Correct.</p> <p>22 Q. And then the next bullet says,</p> <p>23 "Accruals cease for certain employees."</p> <p>24 Do you see that?</p>

23 (Pages 86 to 89)

DONALD E. CAIN

<p style="text-align: right;">Page 90</p> <p>1 A. Yes.</p> <p>2 Q. Does that apply to the Conectiv --</p> <p>3 A. I don't know what that means at this</p> <p>4 point.</p> <p>5 Q. Do you remember Watson Wyatt ever</p> <p>6 informing you that this was the richest Cash</p> <p>7 Balance Plan that they had done up to that point?</p> <p>8 A. I don't remember them informing me,</p> <p>9 but I went through the remainder of my career</p> <p>10 believing that it was a very good Cash Balance</p> <p>11 Plan.</p> <p>12 Q. Was that something that would have</p> <p>13 been conveyed to the employees that were ultimately</p> <p>14 put into the Cash Balance Plan?</p> <p>15 A. I can't say.</p> <p>16 Q. Well, putting this document aside,</p> <p>17 do you remember that's something -- that's a</p> <p>18 message that you, as the head of HR, were looking</p> <p>19 to convey to the employees, that this was a very</p> <p>20 good Cash Balance Plan?</p> <p>21 A. I can't say for certain.</p> <p>22 Q. You have no recollection?</p> <p>23 A. No recollection.</p> <p>24 Q. If you look up at the top slide on</p>	<p style="text-align: right;">Page 92</p> <p>1 Q. Do you know who provided the data</p> <p>2 for these slides?</p> <p>3 A. No.</p> <p>4 Q. Do you know if you played any role</p> <p>5 in preparing those slides?</p> <p>6 A. No.</p> <p>7 Q. And you don't know what the purpose</p> <p>8 of these slides were, right?</p> <p>9 A. Not specifically, no.</p> <p>10 Q. Showing you what's been previously</p> <p>11 marked as Defense Exhibit 13.</p> <p>12 Sir, Defense Exhibit 13 is a copy of</p> <p>13 Plaintiffs' Exhibit 4 that we just looked at. I</p> <p>14 just have a couple questions.</p> <p>15 Do you see where it says -- the</p> <p>16 handwriting on the first page, at the bottom there?</p> <p>17 A. Okay.</p> <p>18 Q. Is that your handwriting?</p> <p>19 A. I don't believe so.</p> <p>20 Q. Do you recognize that handwriting?</p> <p>21 A. No.</p> <p>22 Q. If you go to the page that ends in</p> <p>23 221, there is handwriting at the bottom of that</p> <p>24 page. Do you recognize that handwriting?</p>
<p style="text-align: right;">Page 91</p> <p>1 the right-hand column --</p> <p>2 A. Okay.</p> <p>3 Q. -- do you know what that slide is?</p> <p>4 A. I can't read it.</p> <p>5 It says it's a comparison of the two</p> <p>6 types of plans.</p> <p>7 Q. And do you know what data or</p> <p>8 assumptions went into that chart?</p> <p>9 A. No, I don't.</p> <p>10 Q. Do you know if you played a role in</p> <p>11 preparing that chart?</p> <p>12 A. Probably not.</p> <p>13 Q. Do you know who would have?</p> <p>14 A. No.</p> <p>15 Q. If you go to Bates 305, Page 5 of</p> <p>16 this document --</p> <p>17 A. Okay.</p> <p>18 Q. -- look at the two slides on the</p> <p>19 right-hand column, the middle and the bottom. The</p> <p>20 first one is "Conectiv Cash Balance Plan versus</p> <p>21 Prior Plan - Delmarva," and the next one with deals</p> <p>22 with Atlantic.</p> <p>23 Do you see that?</p> <p>24 A. Okay.</p>	<p style="text-align: right;">Page 93</p> <p>1 A. No.</p> <p>2 (Discussion is held off the record.)</p> <p>3 BY MR. SAUDER:</p> <p>4 Q. Showing you what's been previously</p> <p>5 marked as Defense Exhibit 12 and ask if you've seen</p> <p>6 this document prior to today.</p> <p>7 A. I'm sure I saw it -- oh, wait a</p> <p>8 minute, now. When is this? July 9, 1999.</p> <p>9 Probably saw it then.</p> <p>10 Q. Other than that, you have no</p> <p>11 recollection?</p> <p>12 A. No.</p> <p>13 Q. The title is "InSight Online."</p> <p>14 Do you know what that is?</p> <p>15 A. I don't specifically remember.</p> <p>16 What's it say at the top? Doesn't</p> <p>17 it tell you?</p> <p>18 Q. Do you have a specific recollection</p> <p>19 of documents being issued that said "InSight</p> <p>20 Online"?</p> <p>21 A. No, but it tells you up top what it</p> <p>22 was.</p> <p>23 Q. What was it?</p> <p>24 A. It says, "Conectiv's Intranet</p>

24 (Pages 90 to 93)

DONALD E. CAIN

<p style="text-align: right;">Page 94</p> <p>1 resource for corporate news and information."  2 Q. And when did Conectiv start an  3 Intranet?  4 A. I don't know.  5 Q. And you don't know if all the  6 nonrepresented management employees had Internet  7 access or computers on their desks at that time,  8 correct?  9 A. I don't know for sure.  10 Q. And you don't know whether they all  11 had E-Mail at the time, correct?  12 A. I don't know that for sure.  13 Q. If you go down to where it says  14 "Cash Balance Schedule Revised," do you see that?  15 A. Yes.  16 Q. It says, "A revised schedule for  17 Cash Balance Pension Plan meetings is attached."  18 Do you have any recollection of any  19 revisions to any Cash Balance Pension Plan meetings  20 at that time?  21 A. No.  22 Q. And there is no schedule attached,  23 correct?  24 A. I don't see one.</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. If you go to 484 on the document --  2 Bates Number 484 --  3 A. Okay.  4 Q. -- it says, second paragraph, "This  5 plan is comprised of this document, the base plan,  6 and three parts attached hereto. Part One consists  7 of the CB" -- which stands for the Cash Balance  8 Sub-Plan -- "and applies solely to certain  9 management employees of the employer."  10 Do you see that?  11 A. Yes.  12 Q. So this first document, I think  13 we've established that on the last page that's your  14 signature --  15 A. Correct.  16 Q. -- and that's you adopting this  17 portion of the retirement plan, correct?  18 A. Correct.  19 Q. And then, on Plaintiffs' 10, which  20 is Part One to that plan --  21 A. Right.  22 Q. -- that's the Conectiv Cash Balance  23 Sub-Plan, correct?  24 A. That's what it says.</p>
<p style="text-align: right;">Page 95</p> <p>1 Q. And you have no recollection of  2 attending any meetings where you conveyed  3 information regarding the Cash Balance Plan to the  4 nonrepresented management employees?  5 A. Not specifically.  6 Q. And no recollection of meetings  7 taking place?  8 A. Not specifically.  9 MR. SAUDER: All right, sir, we can  10 break for lunch now.  11 (Recess called at 12:02 p.m.)  12 (Resumed at 12:57 p.m.)  13 BY MR. SAUDER:  14 Q. Good afternoon, sir.  15 I just want to go back to  16 Plaintiffs' Exhibits 9 and 10. If you could just  17 take a look.  18 MR. BASSMAN: Plaintiffs '9 and 10?  19 MR. SAUDER: Right.  20 THE WITNESS: Okay.  21 BY MR. SAUDER:  22 Q. On Plaintiffs'9, the cover says,  23 "Conectiv Retirement Plan," correct?  24 A. Okay.</p>	<p style="text-align: right;">Page 97</p> <p>1 Q. And then, on Bates 1570 --  2 A. Yes.  3 Q. -- that's your signature --  4 A. Correct.  5 Q. -- adopting the Part One of that  6 Conectiv Cash Balance Sub-Plan, correct?  7 A. Yep.  8 MR. SAUDER: You can put those  9 aside.  10 I'll show you what we'll mark as  11 Plaintiffs' Exhibit 19.  12 (Exhibit P-19 is marked for  13 identification.)  14 BY MR. SAUDER:  15 Q. I'm showing you an E-Mail document  16 that's marked as Plaintiffs' Exhibit 19, and this  17 is Bates PHI0003810 through 3811.  18 A. Okay.  19 Q. Looks like this document was written  20 by Wally Judd. Do you know who that is?  21 A. Yes.  22 Q. Who is that?  23 A. He worked in -- he was a manager in  24 corporate communications, I believe, at the time.</p>

25 (Pages 94 to 97)



DONALD E. CAIN

<p style="text-align: right;">Page 98</p> <p>1 Q. And at the time -- this E-Mail is 2 dated April 16, 1998? 3 A. Yes. 4 Q. What were his duties and 5 responsibilities at that time? 6 A. He oversaw communications. 7 Q. Relating to what? 8 A. Anything in the corporation, I 9 assume. 10 Q. And would that be outside 11 communications, also? 12 A. Probably. 13 Q. Who did he report to? 14 A. 1998. I'm not sure. 15 Q. Did he report to you? 16 A. No, not in 1998. 17 Q. At any point? 18 A. Sometime after the merger, he did, 19 and I don't remember exactly what time that was. 20 Q. In what capacity? 21 A. Employee communications manager. 22 Q. And you don't know how close in time 23 to the actual merger that was? 24 A. No.</p>	<p style="text-align: right;">Page 100</p> <p>1 the business units. I'm vague on that. 2 Q. But he wasn't reporting to you? 3 A. Not when I left, no. 4 Q. Do you know if you would have 5 received this E-Mail? 6 A. I was part of the group that it was 7 addressed to. 8 I don't remember specifically. 9 Q. And what group were you part of? 10 A. Directors, VPs, GMs. 11 Q. Is that what that stands for, 12 directors, VPs and GMs? 13 A. Yes. 14 Q. And then the transition team? 15 A. I don't know. It looks like an 16 E-Mail address to me, but I don't -- 17 Q. Okay, but you don't know what "Trans 18 Team" stands for? 19 A. No. 20 Q. The body of the E-Mail states, "Here 21 are the responses to questions which have come up 22 in employee meetings about the Conectiv management 23 benefits." 24 A. Okay.</p>
<p style="text-align: right;">Page 99</p> <p>1 Q. And what was his title? 2 A. When? 3 Q. After the merger, when he reported 4 to you. 5 A. I don't remember his exact title, 6 but he was responsible for employee communications. 7 Q. And what did that mean? 8 A. Any documents or newsletters or 9 anything that we did with the employees, that was 10 his domain. 11 Q. Relating to anything? 12 A. Anything. 13 Q. Was he still there when you left? 14 A. Yes. 15 Q. And what was his title when you 16 left? 17 A. When I left, I don't know for sure, 18 because he wasn't working for me anymore. 19 Q. He wasn't working in that same 20 capacity as employee communications? 21 A. He was doing something with employee 22 communications, but I don't believe it was 23 company-wide anymore. 24 I think it was maybe within one of</p>	<p style="text-align: right;">Page 101</p> <p>1 Q. It says, "Here are the responses." 2 Do you know where those responses 3 came from? 4 A. No, I don't. 5 Q. And do you know who drafted the 6 responses? 7 A. No, I don't. 8 Q. Do you know how the questions were 9 generated? 10 A. I don't. 11 Q. And do you know what the purpose of 12 submitting these questions and answers to this 13 group -- what was the purpose of that? 14 A. I don't know. 15 Q. Do you know, once these -- what was 16 done after this E-Mail with regard to these 17 questions and answers, do you know? 18 A. No. 19 Q. So you don't know the purpose of 20 this exercise? 21 A. Not at this point. 22 Q. Do you have any recollection of any 23 employee meetings taking place around this time, 24 April, '98?</p>

26 (Pages 98 to 101)

DONALD E. CAIN

<p style="text-align: right;">Page 102</p> <p>1 A. No, I have no recollection.</p> <p>2 Q. The individuals that were</p> <p>3 carbon-copied on this E-Mail, do you know any of</p> <p>4 those individuals?</p> <p>5 James Weller?</p> <p>6 A. Yes.</p> <p>7 Q. Who is that?</p> <p>8 A. He was involved in power plants at</p> <p>9 Atlantic before the merger.</p> <p>10 Q. And do you know why he would have</p> <p>11 been on this E-Mail?</p> <p>12 A. No.</p> <p>13 Q. How about Pat King?</p> <p>14 A. Pat King. I don't see Pat King.</p> <p>15 Where is it?</p> <p>16 Q. The last person on the carbon</p> <p>17 copies.</p> <p>18 MR. BASSMAN: There is a "King comma</p> <p>19 Pat" over there.</p> <p>20 THE WITNESS: Oh. Well, the King is</p> <p>21 a location.</p> <p>22 BY MR. SAUDER:</p> <p>23 Q. So you don't know what that Pat --</p> <p>24 A. I don't know what the Pat is.</p>	<p style="text-align: right;">Page 104</p> <p>1 this was in, but he could of, sure.</p> <p>2 Q. Was he still at the company when you</p> <p>3 left?</p> <p>4 A. Yes.</p> <p>5 Q. What was his role at that time when</p> <p>6 you left?</p> <p>7 A. Manager -- a human resource manager</p> <p>8 in one of the nonutility business units.</p> <p>9 MR. SAUDER: I'll show you what</p> <p>10 we'll have marked as Plaintiffs' Exhibit 20.</p> <p>11 (Exhibit P-20 is marked for</p> <p>12 identification.)</p> <p>13 BY MR. SAUDER:</p> <p>14 Q. Sir, showing you what's been marked</p> <p>15 as Plaintiffs' Exhibit 20. This is Bates PHI003812</p> <p>16 through 14.</p> <p>17 A. Okay.</p> <p>18 Q. An E-Mail sent by Wally Judd,</p> <p>19 May 8th, 1998.</p> <p>20 Would you have received a copy of</p> <p>21 this E-Mail?</p> <p>22 A. Probably.</p> <p>23 Q. And what do you base that on?</p> <p>24 A. Just it was sent to leadership</p>
<p style="text-align: right;">Page 103</p> <p>1 Q. How about Harold, last name D-e-J --</p> <p>2 A. DeJarnette?</p> <p>3 Q. Yes. Do you know that person?</p> <p>4 A. Yes.</p> <p>5 Q. Who is that?</p> <p>6 A. He was a manager in human resources.</p> <p>7 Q. Did he report to you?</p> <p>8 A. Yes.</p> <p>9 Q. And what was his role?</p> <p>10 A. I don't remember a specific role in</p> <p>11 the merger.</p> <p>12 Q. Do you know why he would have been</p> <p>13 on this E-Mail?</p> <p>14 A. No, I don't.</p> <p>15 Q. Did you play any role in</p> <p>16 implementing the Cash Balance Plan?</p> <p>17 A. No more so than any other HR</p> <p>18 employee.</p> <p>19 He wasn't specifically working on</p> <p>20 the Cash Balance Plan.</p> <p>21 Q. He would have been somebody who,</p> <p>22 what, answered questions, if employees had them?</p> <p>23 A. May have.</p> <p>24 I don't remember the exact role that</p>	<p style="text-align: right;">Page 105</p> <p>1 people, and I don't know -- see, I can't tell</p> <p>2 you -- it says, "Leadership@Exec." I don't know</p> <p>3 exactly what group that's referring to, but I'm</p> <p>4 just guessing I got a copy of it.</p> <p>5 Q. Do you know who would have been in</p> <p>6 the leadership group, as it's defined here?</p> <p>7 A. Not specifically.</p> <p>8 Q. But you would -- you assume you</p> <p>9 would have?</p> <p>10 A. Probably.</p> <p>11 Q. But you have no specific</p> <p>12 recollection of receiving this E-Mail?</p> <p>13 A. No.</p> <p>14 Q. Karen Francks, who is that?</p> <p>15 A. She was a human resource manager.</p> <p>16 Q. And did she report to you?</p> <p>17 A. Yes.</p> <p>18 Q. And what was her responsibility?</p> <p>19 A. I don't remember at the time.</p> <p>20 Q. Was she still there when you left?</p> <p>21 A. Yes.</p> <p>22 Q. What was her role when you left?</p> <p>23 A. When I left, she was manager of</p> <p>24 leadership -- employee and executive development or</p>

27 (Pages 102 to 105)

DONALD E. CAIN

<p style="text-align: right;">Page 106</p> <p>1 leadership development or something.  2 Q. Did she report to you when you  3 left -- at the time that you left?  4 A. Yes.  5 Q. Did she have any role in employee  6 communication?  7 A. I don't remember.  8 Q. The body of the E-Mail, do you see  9 where -- toward the top portion -- first paragraph,  10 I guess the middle of the paragraph, it says, "The  11 thrust of this communications effort has been  12 business leaders telling people working for them  13 about what is going on -- both data and  14 perspective."  15 A. Um-hum.  16 Q. Do you know what that means?  17 MR. BASSMAN: Objection.  18 You can answer.  19 THE WITNESS: I believe it was part  20 of the communications strategy to try to have as  21 many pieces of information get to employees through  22 the people in their business -- line of business.  23 BY MR. SAUDER:  24 Q. And how -- so you are saying</p>	<p style="text-align: right;">Page 108</p> <p>1 THE WITNESS: No.  2 BY MR. SAUDER:  3 Q. If you look at the next paragraph,  4 the sentence in the middle that states, "We will be  5 sending out posters to sites reminding people of  6 the sign-up period."  7 Do you know what that means?  8 THE WITNESS: No.  9 MR. BASSMAN: Objection.  10 BY MR. SAUDER:  11 Q. Question Number 5 on the last page  12 of this document, which is 3814 --  13 A. Okay.  14 Q. -- the question states, "The Facts  15 newsletters says that, under the new Cash Balance  16 Plan -- new Cash Balance Pension Plan, the entire  17 value of your pension account will be paid to your  18 beneficiary. Do grandfathered employees have to  19 choose between the plans now for purposes of  20 survivor benefits?"  21 And the answer, "As explained above,  22 you will only need to designate a beneficiary."  23 Do you see that?  24 A. Yes.</p>
<p style="text-align: right;">Page 107</p> <p>1 communicating to the business leaders who would  2 then communicate --  3 A. To employees.  4 Q. Who are you defining as business  5 leaders?  6 A. I don't know. It's a broad term.  7 Q. You don't know what group that  8 means?  9 A. I don't think it was a group. I  10 think it was a general term.  11 Q. So you have no specific knowledge on  12 how information was communicated from the business  13 leaders, whoever they were, to anybody below them?  14 A. To any given employee, no.  15 Q. The bottom of that first paragraph  16 says, "We have responded to about two dozen  17 questions so far and are working on about another  18 dozen."  19 Do you see that?  20 A. Yes.  21 Q. And it says, "We have responded."  22 Do you have any idea who that  23 means -- who that relates to? The "We"?  24 MR. BASSMAN: Objection.</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. You have no idea where that question  2 came from?  3 A. No.  4 Q. Do you know what that answer means?  5 MR. BASSMAN: Objection.  6 THE WITNESS: It says you only need  7 to designate a beneficiary.  8 BY MR. SAUDER:  9 Q. If you were grandfathered, was your  10 beneficiary entitled to receive the full amount of  11 your pension, as you understand it?  12 MR. BASSMAN: Objection.  13 THE WITNESS: I can't answer that  14 definitively. I don't remember.  15 BY MR. SAUDER:  16 Q. Do you remember, under the old plan,  17 whether a beneficiary was entitled to receive the  18 full amount of the pension? The beneficiary of  19 the --  20 A. Under what old plan?  21 Q. Under the defined benefit plan  22 Delmarva and ACE had, prior to the Cash Balance  23 Plan.  24 A. I can't -- I don't remember ACE,</p>

28 (Pages 106 to 109)



DONALD E. CAIN

<p style="text-align: right;">Page 110</p> <p>1 but, in the Delmarva plan, there was a survivor --</p> <p>2 well, you took an annuity and the spouse was</p> <p>3 entitled to 50 percent of the annuity.</p> <p>4 Q. And do you know, under the Cash</p> <p>5 Balance Plan, as this is answered here, whether the</p> <p>6 individuals that were grandfathered, was the spouse</p> <p>7 entitled to 100 percent of the annuity if they were</p> <p>8 grandfathered?</p> <p>9 A. No, I don't believe so, but I don't</p> <p>10 remember.</p> <p>11 Q. You are not sure?</p> <p>12 A. You are getting into a level of</p> <p>13 detail that has long escaped me.</p> <p>14 MR. SAUDER: Okay. Show you what</p> <p>15 will be marked as Plaintiffs' Exhibit 21.</p> <p>16 (Exhibit P-21 is marked for</p> <p>17 identification.)</p> <p>18 BY MR. SAUDER:</p> <p>19 Q. Showing you what's been marked as</p> <p>20 Plaintiffs' Exhibit 21, Bates PHI003815 through 16.</p> <p>21 It's an E-Mail from Wally Judd, dated 5-14-98.</p> <p>22 Would you have received a copy of</p> <p>23 this E-Mail?</p> <p>24 A. Probably.</p>	<p style="text-align: right;">Page 112</p> <p>1 best ways you can"? Do you know what that means?</p> <p>2 A. Well, it's addressed to the</p> <p>3 leadership, whoever that is, and it's asking them</p> <p>4 to make sure this information gets in the hands of</p> <p>5 everybody and let them determine what's the best</p> <p>6 way to do it.</p> <p>7 Q. Everyone that they are supervising?</p> <p>8 A. I would assume that. I don't know</p> <p>9 that.</p> <p>10 Q. And it's giving the leadership</p> <p>11 discretion on how to communicate this, correct?</p> <p>12 A. Correct.</p> <p>13 Q. You have no specific recollection on</p> <p>14 how this was communicated to anyone beyond --</p> <p>15 A. Not any individual.</p> <p>16 Q. Would you have had any</p> <p>17 responsibility to pass this information on to</p> <p>18 anyone below you?</p> <p>19 A. Probably not.</p> <p>20 Q. Why do you say that?</p> <p>21 A. Because everyone below me probably</p> <p>22 would have been in that leadership group.</p> <p>23 Q. And they would have had</p> <p>24 responsibility somehow to communicate this to</p>
<p style="text-align: right;">Page 111</p> <p>1 Q. Because it says "Leadership"?</p> <p>2 A. Probably.</p> <p>3 Q. And this is a smaller group than the</p> <p>4 other E-Mail, correct?</p> <p>5 A. It would appear that, from what's on</p> <p>6 this first page.</p> <p>7 Q. And, when I say "the other E-Mail,"</p> <p>8 I mean Plaintiffs' Exhibit 20.</p> <p>9 Do you have any specific</p> <p>10 recollection of receiving this E-Mail?</p> <p>11 A. No.</p> <p>12 Q. Do you have any recollection of</p> <p>13 participating in any responses or how responses</p> <p>14 would be formulated to these questions?</p> <p>15 A. Not specifically.</p> <p>16 Q. How about generally?</p> <p>17 A. Not these particular questions.</p> <p>18 Q. And the body of this E-Mail states,</p> <p>19 "Here is the last set of questions asked by</p> <p>20 employees at the recent round of management</p> <p>21 meetings. Please get the responses out to your</p> <p>22 people in the best ways you can."</p> <p>23 Do you know what that means,</p> <p>24 "Please get the responses out to your people in the</p>	<p style="text-align: right;">Page 113</p> <p>1 someone below them?</p> <p>2 A. Well, some of them may have had</p> <p>3 people that were also in the leadership group but I</p> <p>4 can't remember exact structure at the time.</p> <p>5 Q. But you don't recall implementing</p> <p>6 some uniform plan on how this information would be</p> <p>7 communicated to anyone beyond this E-Mail, correct?</p> <p>8 A. Not specifically.</p> <p>9 Q. Showing you what's been marked as</p> <p>10 Defense Exhibit 3, have you seen this document</p> <p>11 prior to today?</p> <p>12 A. I probably saw it in 1998 or</p> <p>13 sometime around then.</p> <p>14 Q. Have you had an opportunity to</p> <p>15 review the document?</p> <p>16 A. No.</p> <p>17 Q. Do you want to take an opportunity</p> <p>18 to review it?</p> <p>19 A. Sure.</p> <p>20 Okay.</p> <p>21 Q. Does that refresh your recollection</p> <p>22 as to whether you saw this document prior to today?</p> <p>23 A. No.</p> <p>24 Q. Do you know what the logo is in the</p>

29 (Pages 110 to 113)

DONALD E. CAIN

Page 114	Page 116
<p>1 bottom right-hand corner on the first page?</p> <p>2 A. Yes, Watson Wyatt.</p> <p>3 Q. And do you know what role they</p> <p>4 played in the Conectiv Cash Balance Plan in</p> <p>5 February of '98?</p> <p>6 A. I can't say for certain.</p> <p>7 They were involved somehow because</p> <p>8 their logo is on the paper.</p> <p>9 Q. Is it fair to say that you and Ben</p> <p>10 Wilkinson were at a meeting where Watson Wyatt</p> <p>11 presented this slide?</p> <p>12 A. How could I say that?</p> <p>13 Q. Do you have any recollection of</p> <p>14 being at a meeting with Ben Wilkinson discussing</p> <p>15 these issues that are in this document?</p> <p>16 A. Not a specific meeting about this</p> <p>17 document.</p> <p>18 Q. Do you remember being in meetings</p> <p>19 with Ben Wilkinson and Watson Wyatt discussing a</p> <p>20 Cash Balance Plan?</p> <p>21 A. Sometime, sure.</p> <p>22 Q. Sometime? 1998?</p> <p>23 A. Sometime around implementation.</p> <p>24 Q. Who else would have been in those</p>	<p>1 A. Yes.</p> <p>2 Q. Do you know the source of that</p> <p>3 assumption?</p> <p>4 A. No.</p> <p>5 Q. Go to Bates 455.</p> <p>6 Do you see the graph on 455?</p> <p>7 A. Yes.</p> <p>8 Q. It says at the top, "5 Year</p> <p>9 Grandfather Provision."</p> <p>10 A. Yes.</p> <p>11 Q. At some point in time do you recall</p> <p>12 discussing that the grandfather provision would be</p> <p>13 five years as opposed to ten years?</p> <p>14 A. No.</p> <p>15 Q. Would you have participated in any</p> <p>16 discussions regarding the length of the</p> <p>17 grandfathering provision?</p> <p>18 A. I might have.</p> <p>19 I don't remember specifically.</p> <p>20 Q. But, as the head of HR, do you</p> <p>21 assume you would have?</p> <p>22 A. I think that's a fair assumption,</p> <p>23 but I don't remember.</p> <p>24 Q. Ben Wilkinson would have, also?</p>
Page 115	Page 117
<p>1 meetings on the Conectiv side?</p> <p>2 A. I don't have any memory of that.</p> <p>3 Q. Who would have been in the meetings</p> <p>4 from Watson Wyatt?</p> <p>5 A. I don't know that, either.</p> <p>6 Q. Do you know who the main contact was</p> <p>7 at Watson Wyatt regarding the Cash Balance Plan?</p> <p>8 A. Not today.</p> <p>9 Q. Go to page Bates ending 447.</p> <p>10 A. Okay.</p> <p>11 Q. Do you see that handwriting there?</p> <p>12 A. Yes.</p> <p>13 Q. Do you recognize that handwriting?</p> <p>14 A. No.</p> <p>15 Q. Go to Bates 449.</p> <p>16 A. Okay.</p> <p>17 Q. See that graph there, it's titled,</p> <p>18 "Pattern of Lump Sum Benefit Growth"?</p> <p>19 A. Yes.</p> <p>20 Q. Do you know what the purpose was of</p> <p>21 this data presentation?</p> <p>22 A. No.</p> <p>23 Q. Do you see at the bottom it says,</p> <p>24 "Assumes 3 percent annual salary increase"?</p>	<p>1 A. I would assume that, also, but I</p> <p>2 didn't remember that.</p> <p>3 Q. Do you know what the purpose -- what</p> <p>4 this graph is intended the convey?</p> <p>5 A. No.</p> <p>6 Q. Do you remember seeing this graph?</p> <p>7 A. No.</p> <p>8 Q. Fair to say that Watson Wyatt would</p> <p>9 have also been involved in the grandfathering</p> <p>10 discussion?</p> <p>11 A. That would be a fair assumption. I</p> <p>12 don't have any recollection of that specifically.</p> <p>13 Q. So you have no recollection of this</p> <p>14 slide show, correct?</p> <p>15 A. No.</p> <p>16 Q. Showing you what's been previously</p> <p>17 marked as Defense Exhibit 8. If you could take a</p> <p>18 moment to look at that and let me know if you've</p> <p>19 seen this document prior to today.</p> <p>20 A. Okay.</p> <p>21 Q. Have you seen this document prior to</p> <p>22 today?</p> <p>23 A. Not that I remember.</p> <p>24 Q. It says on the cover, Conectiv Total</p>

30 (Pages 114 to 117)

DONALD E. CAIN

<p style="text-align: right;">Page 118</p> <p>1 Rewards, The tangible and hidden paychecks."  2 Do you know what that means, "hidden  3 paychecks"?  4 A. The benefits, I guess.  5 Q. Do you know what "hidden" means?  6 MR. BASSMAN: Objection.  7 THE WITNESS: No, I don't know  8 specifically what hidden means.  9 BY MR. SAUDER:  10 Q. In your discussions implementing the  11 Cash Balance Plan, did you ever discuss any, quote,  12 unquote, hidden paychecks?  13 A. No.  14 Q. You don't remember that term?  15 A. No.  16 Q. Do you recall a presentation where  17 these issues were discussed? These issues that are  18 in this document?  19 A. No, I don't.  20 Q. Go to Bates 199.  21 A. Okay.  22 Q. It says "Background" and then it  23 says "Goals."  24 A. Okay.</p>	<p style="text-align: right;">Page 120</p> <p>1 Q. Two charts. One chart on the left  2 says "Retirement," the chart on the right says  3 "Health."  4 A. Correct.  5 Q. Do you remember seeing these graphs  6 prior to today?  7 A. No.  8 Q. The chart on the left says  9 "Retirement." It says, "Dollars spent by others  10 for every \$100 spent by Conectiv."  11 Do you see that?  12 A. Okay.  13 Q. Do you see that?  14 A. Yes.  15 Q. And it says -- for Conectiv it has a  16 bar graph with 100 and then -- do you know what  17 that's comparing --  18 A. No, I don't.  19 Q. -- that graph?  20 Well, after reviewing that, do you  21 have an understanding of what that graph is  22 supposed to represent?  23 A. No.  24 Q. You don't?</p>
<p style="text-align: right;">Page 119</p> <p>1 Q. And this document has a Conectiv  2 logo on it, correct?  3 A. Yes, it does.  4 Q. It says "Goals." One of the goals  5 is "Costs"?  6 A. Yes.  7 Q. Is that referring to cost savings to  8 the company?  9 A. Yes.  10 MR. BASSMAN: Objection.  11 BY MR. SAUDER:  12 Q. You can answer.  13 A. Probably.  14 Or cost avoidance. May not be  15 savings. May have been cost avoidance.  16 Q. What does that mean?  17 A. Means to mitigate future increases.  18 Q. But you are not certain --  19 A. Not certain.  20 Q. -- what that means?  21 A. No.  22 Q. Go to the Bates that ends 201. See  23 that chart there that says "Regional Comparisons"?  24 A. Yes.</p>	<p style="text-align: right;">Page 121</p> <p>1 A. No. Not now.  2 Q. I mean, looking at it now, can you  3 figure out what that graph is supposed to  4 represent?  5 MR. BASSMAN: Objection.  6 THE WITNESS: No. I don't remember  7 specifically enough to explain it to somebody.  8 BY MR. SAUDER:  9 Q. Do you know if this graph  10 represents, for every \$100 Conectiv spent on  11 retirement, Atlantic was spending \$122?  12 A. That's what the chart indicates, but  13 it's not just retirement. It's pension, 401(k)s  14 and post-retirement medical, according to  15 the footnote.  16 Q. Right.  17 How about Delmarva? It says, for  18 every \$100 spent, Delmarva was spending \$109.  19 A. That's what the graph says.  20 Q. Do you have any reason to believe  21 that these numbers aren't accurate?  22 A. I have no reason to believe they are  23 or aren't.  24 Q. Do you know where these numbers came</p>

31 (Pages 118 to 121)

DONALD E. CAIN

<p style="text-align: right;">Page 122</p> <p>1 from?</p> <p>2 A. I have no idea.</p> <p>3 Q. If you look at Bates 203, do you see</p> <p>4 that graph on the left-hand side of the page?</p> <p>5 A. Yes.</p> <p>6 Q. Do you know what that graph conveys?</p> <p>7 MR. BASSMAN: Objection.</p> <p>8 THE WITNESS: Looks like it's a</p> <p>9 comparison of the current plan with the Cash</p> <p>10 Balance Plan.</p> <p>11 BY MR. SAUDER:</p> <p>12 Q. Do you know who prepared the graph?</p> <p>13 A. No.</p> <p>14 Q. Do you know what data or assumptions</p> <p>15 went into the preparation of this graph?</p> <p>16 A. No.</p> <p>17 Q. You played no role in preparing the</p> <p>18 graph?</p> <p>19 A. No.</p> <p>20 Q. Look to the next page, Bates 204.</p> <p>21 A. Okay.</p> <p>22 Q. Do you see the handwriting on the</p> <p>23 right-hand side?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 124</p> <p>1 MR. BASSMAN: Objection.</p> <p>2 THE WITNESS: Be willing to discuss</p> <p>3 things with them.</p> <p>4 BY MR. SAUDER:</p> <p>5 Q. Did you write that sentence?</p> <p>6 A. No.</p> <p>7 Q. Do you have any specific knowledge</p> <p>8 of what it was supposed to mean when it was</p> <p>9 written?</p> <p>10 A. No.</p> <p>11 Q. Do you know who wrote that then?</p> <p>12 A. No.</p> <p>13 Q. You are just assuming, based on</p> <p>14 reading what it says?</p> <p>15 A. On what it says.</p> <p>16 Q. Right.</p> <p>17 A. Yes.</p> <p>18 Q. Okay.</p> <p>19 Is there some understanding within</p> <p>20 Conectiv that the, quote, unquote, leaders would go</p> <p>21 out and essentially sell the new plan to the</p> <p>22 employees?</p> <p>23 MR. BASSMAN: Objection.</p> <p>24 THE WITNESS: We expected the</p>
<p style="text-align: right;">Page 123</p> <p>1 Q. Do you recognize that?</p> <p>2 A. No.</p> <p>3 Q. How about on the next page, 205? Do</p> <p>4 you see that handwriting there?</p> <p>5 A. Yes.</p> <p>6 Q. You don't recognize it?</p> <p>7 A. No.</p> <p>8 Q. Flip to 214.</p> <p>9 A. Okay.</p> <p>10 Q. Do you see that last -- this is a</p> <p>11 summary, and then the last bullet says, "Expect</p> <p>12 leaders to support direction and positively engage</p> <p>13 employees"?</p> <p>14 A. Yes.</p> <p>15 Q. What do you understand that to mean?</p> <p>16 A. What it says.</p> <p>17 Q. Who are leaders?</p> <p>18 MR. BASSMAN: Objection.</p> <p>19 THE WITNESS: Leaders. People who</p> <p>20 are natural or designated leaders in the</p> <p>21 organization. Managers, supervisors.</p> <p>22 BY MR. SAUDER:</p> <p>23 Q. "Positively engage employees," what</p> <p>24 does that mean?</p>	<p style="text-align: right;">Page 125</p> <p>1 leaders to be supportive of the plan.</p> <p>2 BY MR. SAUDER:</p> <p>3 Q. And to convey that to the employees?</p> <p>4 A. Sure.</p> <p>5 Q. Sir, showing you what's been marked</p> <p>6 as Defense Exhibit D-7.</p> <p>7 Have you seen this document prior to</p> <p>8 today?</p> <p>9 A. I probably saw it in '98 or '99,</p> <p>10 whenever it was produced.</p> <p>11 Q. Would you have played any role in</p> <p>12 preparing the document?</p> <p>13 A. Probably not in preparation.</p> <p>14 Q. Do you have any knowledge on how it</p> <p>15 would have been issued?</p> <p>16 A. No.</p> <p>17 Q. No knowledge on who it would be</p> <p>18 issued to?</p> <p>19 A. No.</p> <p>20 Q. Sir, showing you what's been marked</p> <p>21 as Plaintiffs' Exhibit 5.</p> <p>22 A. Okay.</p> <p>23 Q. Have you seen this document prior to</p> <p>24 today?</p>

32 (Pages 122 to 125)

DONALD E. CAIN

<p style="text-align: right;">Page 126</p> <p>1 A. When was it produced?</p> <p>2 Q. I don't think there is a date on it.</p> <p>3 A. I don't see any date on it.</p> <p>4 I may have seen it. I don't know.</p> <p>5 Q. You are not certain?</p> <p>6 A. I'm not certain.</p> <p>7 Q. Do you know -- at the time that the</p> <p>8 Cash Balance Plan was implemented, do you know what</p> <p>9 portion of the employees were union?</p> <p>10 A. No.</p> <p>11 Q. Do you know what portion were</p> <p>12 management?</p> <p>13 A. No.</p> <p>14 Q. Nonunion management?</p> <p>15 A. No.</p> <p>16 Q. Do you know what portion were</p> <p>17 grandfathered?</p> <p>18 A. No.</p> <p>19 Q. So I assume you have -- based on</p> <p>20 your question to me, that you have no recollection</p> <p>21 or no specific knowledge on how this or whether</p> <p>22 this document was disseminated?</p> <p>23 A. No.</p> <p>24 Q. And no knowledge when it would have</p>	<p style="text-align: right;">Page 128</p> <p>1 A. I have no idea.</p> <p>2 MR. BASSMAN: Objection.</p> <p>3 THE WITNESS: I have no idea.</p> <p>4 BY MR. SAUDER:</p> <p>5 Q. Showing you what's been marked as</p> <p>6 Defendants' 19. Take a look at that document and</p> <p>7 let me know if you've seen that document prior to</p> <p>8 today.</p> <p>9 A. I don't recollect this specific</p> <p>10 document.</p> <p>11 Q. Do you know what this document is?</p> <p>12 A. It says it's the Cash Balance</p> <p>13 Sub-Plan of the Conectiv Retirement Plan, Summary</p> <p>14 Plan Description.</p> <p>15 Q. And do you know when it would have</p> <p>16 been issued?</p> <p>17 A. No.</p> <p>18 Q. Do you know who prepared this</p> <p>19 document?</p> <p>20 A. No.</p> <p>21 Q. Do you know if you played any role</p> <p>22 in preparing this document?</p> <p>23 A. I don't remember.</p> <p>24 Q. Do you know whether this document</p>
<p style="text-align: right;">Page 127</p> <p>1 been?</p> <p>2 A. No.</p> <p>3 Q. Do you know who this document was</p> <p>4 prepared by?</p> <p>5 A. No.</p> <p>6 Q. If you flip to Bates 73 -- ending in</p> <p>7 73 --</p> <p>8 A. Okay.</p> <p>9 Q. -- do you see at the very bottom it</p> <p>10 says, "Employer Identification Number," and that's</p> <p>11 blank?</p> <p>12 A. Yes.</p> <p>13 Q. If you go to the next page, 74, it</p> <p>14 says "Participating Employer," and that's blank?</p> <p>15 A. Yes.</p> <p>16 Q. And then the "Employer</p> <p>17 Identification Number" is blank?</p> <p>18 A. Yes.</p> <p>19 Q. And then, "Trustee," it says, "Name"</p> <p>20 and "Address," and there is nothing filled in</p> <p>21 there?</p> <p>22 A. Yes.</p> <p>23 Q. Do you believe that this may be a</p> <p>24 draft?</p>	<p style="text-align: right;">Page 129</p> <p>1 was disseminated to all employees in the Cash</p> <p>2 Balance Plan?</p> <p>3 A. I really don't know.</p> <p>4 Q. If employees requested a copy of the</p> <p>5 summary plan description, was there anything in</p> <p>6 place where that would be logged?</p> <p>7 A. I don't know that.</p> <p>8 Q. You don't know that?</p> <p>9 A. No.</p> <p>10 Q. There is no date on this document,</p> <p>11 correct?</p> <p>12 A. I don't see one. You looked through</p> <p>13 it all. I'm sure you know. Is there any date on</p> <p>14 this document?</p> <p>15 Q. I don't see one.</p> <p>16 A. Very good. Thank you.</p> <p>17 Q. Show you what we've marked as D-22.</p> <p>18 Sir, the last page of this document,</p> <p>19 311 -- it's actually not part of the document.</p> <p>20 That's the way it was initially marked, though. If</p> <p>21 you'd just look at 308 through 310.</p> <p>22 A. Okay.</p> <p>23 Q. Have you seen this document prior to</p> <p>24 today?</p>

33 (Pages 126 to 129)



DONALD E. CAIN

<p style="text-align: right;">Page 130</p> <p>1 A. I probably saw it when it was 2 issued. 3 Q. Do you know when that would have 4 been? 5 A. No idea. 6 Q. Would you have played any role in 7 preparing this document? 8 A. Not that I remember. 9 Q. Fair to say, you have no idea 10 whether or how this was disseminated? 11 A. No. 12 Q. Correct? 13 A. Nope. No idea. 14 Q. Showing you what's been marked as 15 Plaintiffs' Exhibit 6. 16 A. Okay. 17 Q. Have you seen this document prior to 18 today? 19 A. No. 20 Q. Had you seen any employee releases 21 while -- at the time you were at Conectiv? Had you 22 seen copies of releases? 23 A. I don't remember. 24 Q. Did you play any role in</p>	<p style="text-align: right;">Page 132</p> <p>1 Q. So you had officially retired from 2 Conectiv -- 3 A. Yes. 4 Q. -- and then came back as a 5 consultant? 6 A. Correct. 7 Q. And were you on a contract at that 8 point? 9 A. Yes. 10 Q. So you were not -- 11 A. I was not an employee of Pepco; I 12 was a contractor. 13 Q. What were your responsibilities as a 14 consultant? What were you consulting regarding? 15 A. Just helping with all the HR issues 16 of integration and using my experience from the 17 Atlantic merger to help both Pepco and Conectiv 18 people understand some of the issues and how to go 19 about dealing with integration of employees and my 20 knowledge from that. 21 Q. And were you planning on leaving 22 Conectiv prior to the merger at that time? 23 A. No. 24 Q. Did you leave as a result of the</p>
<p style="text-align: right;">Page 131</p> <p>1 participating in the drafting of releases? 2 A. Probably not. 3 Q. Did you sign a release when you left 4 Conectiv? 5 A. I don't remember. 6 Q. Do you know if there were form 7 releases at the time you left Conectiv? 8 A. I think I answered that one. 9 I don't remember. 10 Q. You don't remember. 11 Showing you what's been marked as 12 Plaintiffs' Exhibit 7. 13 Have you seen this -- 14 A. No. 15 Q. -- prior to today? 16 A. No. 17 Q. Had the company -- had Pepco come in 18 at the time you left or was it still Conectiv? 19 A. I retired at the merger, and then I 20 worked for six months as a consultant, but not in 21 the role of human resource VP. 22 Q. You worked for six months as a 23 consultant for Pepco? 24 A. Yes.</p>	<p style="text-align: right;">Page 133</p> <p>1 merger? 2 A. Correct. 3 Q. Were you laid off as a result of the 4 merger? 5 A. Well, I had an agreement and the 6 agreement was violated and I chose to exercise my 7 agreement. 8 Q. What does that mean, your agreement 9 was violated? 10 A. Because of the positions and things 11 and the way they worked out post-merger, it didn't 12 satisfy the conditions of the agreement. 13 Q. Who did you have this agreement 14 with? 15 A. Conectiv. 16 Q. What was your understanding of the 17 agreement? 18 A. Of my Severance Agreement? 19 Q. What do you say was violated? 20 A. The position that was being 21 considered, whether I'd be offered it, and who I'd 22 be reporting to, and whether I had to work in 23 Washington, whether all my terms of employment 24 would be the same, and, when it was determined they</p>

34 (Pages 130 to 133)

DONALD E. CAIN

<p style="text-align: right;">Page 134</p> <p>1 wouldn't be, I opted to leave.</p> <p>2 Q. What position were they offering you</p> <p>3 at Pepco that you didn't --</p> <p>4 A. They never really offered me a</p> <p>5 position.</p> <p>6 Q. Well, was your understanding that</p> <p>7 you would not have to move to Washington?</p> <p>8 A. No. I was under the belief I might</p> <p>9 have to move to Washington.</p> <p>10 You know, obviously, when you have</p> <p>11 two companies coming together, you have two people</p> <p>12 doing everything and it was -- it made sense for me</p> <p>13 to go.</p> <p>14 Q. So who did you negotiate the</p> <p>15 six-month consulting arrangement with?</p> <p>16 A. Barbara Graham.</p> <p>17 Q. And who was that?</p> <p>18 A. She was -- I think she was named</p> <p>19 the -- either senior VP or executive VP in Pepco</p> <p>20 post-merger of like all the administrative</p> <p>21 functions.</p> <p>22 Q. So you were hoping to stay on with</p> <p>23 Pepco in a position that you were satisfied with?</p> <p>24 A. Maybe. I can't remember my exact</p>	<p style="text-align: right;">Page 136</p> <p>1 changes would take place with regard to any of the</p> <p>2 benefits just prior to Pepco coming in?</p> <p>3 A. During that six months I may have</p> <p>4 been involved in some discussions around the</p> <p>5 comparison -- we compared the benefits. I probably</p> <p>6 was gone before all the final decisions were made.</p> <p>7 Q. What does that mean, you compared</p> <p>8 the benefits?</p> <p>9 A. We did some kind of a chart.</p> <p>10 Even -- as soon as the merger was announced, we</p> <p>11 began working on that, of putting side by side</p> <p>12 Pepco benefits and Conectiv benefits and where</p> <p>13 there were differences and where there were</p> <p>14 similarities and -- but I don't know what the</p> <p>15 outcome of all that discussion ended up being.</p> <p>16 Q. And was there a comparison with</p> <p>17 regard to the retirement plan?</p> <p>18 A. I'm sure there were.</p> <p>19 Q. And did Pepco have a Cash Balance</p> <p>20 Plan at the time it came into the picture?</p> <p>21 A. I don't know. I don't remember.</p> <p>22 Q. Was there any discussion at around</p> <p>23 that time that the Conectiv entity would do away</p> <p>24 with the Cash Balance Plan post merger?</p>
<p style="text-align: right;">Page 135</p> <p>1 emotions at the time.</p> <p>2 Q. When did Mr. Wilkinson leave the</p> <p>3 company?</p> <p>4 A. Oh, my. I don't remember.</p> <p>5 Q. Do you know who replaced him?</p> <p>6 A. I believe it was John Zimmerman, but</p> <p>7 I don't remember that specifically.</p> <p>8 Q. Do you know what John Zimmerman's</p> <p>9 role was just prior to Mr. Wilkinson's leaving the</p> <p>10 company?</p> <p>11 A. The sequence is kind of fuzzy. At</p> <p>12 one point he was manager of employee relations,</p> <p>13 which is primarily union.</p> <p>14 Q. When Mr. Wilkinson left, did he</p> <p>15 essentially just take over that job, also?</p> <p>16 A. Yes, I believe so. I believe he had</p> <p>17 both for a while.</p> <p>18 Q. Both positions?</p> <p>19 A. For a while.</p> <p>20 But, you know, I can't remember</p> <p>21 exact sequence of who left when and how we did</p> <p>22 things on an interim basis. It's too long ago.</p> <p>23 Q. And were you involved in any of the</p> <p>24 discussions on what would happen -- what, if any,</p>	<p style="text-align: right;">Page 137</p> <p>1 A. I don't believe so.</p> <p>2 Q. At any time prior to that -- after</p> <p>3 the implementation of the Cash Balance Plan and</p> <p>4 before Pepco came in, was there ever any discussion</p> <p>5 about doing away with the Cash Balance Plan?</p> <p>6 A. I don't believe so.</p> <p>7 Q. Do you know if the Cash Balance Plan</p> <p>8 remained in effect after Pepco came into the</p> <p>9 picture?</p> <p>10 A. I don't know.</p> <p>11 Q. Do you know that, as of 2005, new</p> <p>12 Pepco employees are not put into the Cash Balance</p> <p>13 Plan?</p> <p>14 MR. BASSMAN: Objection.</p> <p>15 THE WITNESS: I didn't know that.</p> <p>16 BY MR. SAUDER:</p> <p>17 Q. Your six-month consulting, were you</p> <p>18 paid by Pepco?</p> <p>19 A. Yes -- well, that's a technical</p> <p>20 question. I don't know whether one of the</p> <p>21 entities -- Conectiv Resource Partners might have</p> <p>22 been the pay vehicle. I don't remember whether the</p> <p>23 check had Pepco on it or it came from some other</p> <p>24 place.</p>

35 (Pages 134 to 137)

Page 140

NOTARY PUBLIC

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_



1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF DELAWARE

3 PORTIONS CONFIDENTIAL

4 J. MICHAEL CHARLES; MAURICE W.  
5 WARD, JR.; and JOSEPH I. FINK, JR.,  
6 on behalf of themselves and  
all others similarly situated,  
Plaintiff

7 V C.A. No. 05-702 (SLR)

8 PEPCO HOLDINGS, INC.; CONECTIV, and  
PEPCO HOLDINGS RETIREMENT PLAN,  
Defendants

9 - - -

10 THOMAS S. TROUP, on behalf of himself  
and all others similarly situated,  
11 Plaintiff

12 V C.A. No. 06-10 (SLR)

13 PEPCO HOLDINGS, INC.; CONECTIV, and  
PEPCO HOLDINGS RETIREMENT PLAN,  
14 Defendants

15 Oral deposition of JEROME  
16 MICHAEL CHARLES, taken at the law  
17 offices of Pepper Hamilton LLP, 3000  
18 Two Logan Square, Eighteenth and Arch  
19 Streets, Philadelphia, Pennsylvania,  
20 on Tuesday, January 9, 2007,  
21 commencing at 9:39 a.m., before  
22 Barbara McKeon Quinn, a Registered  
23 Merit Reporter and Notary Public,  
24 pursuant to notice.

## ORAL DEPOSITION OF JEROME MICHAEL CHARLES, 1/9/07

Page 2

Page 4

1 APPEARANCES:  
 2 JAMES R. MALONE, JR., ESQUIRE  
 jamesmalone@chimicles.com  
 3 JOSEPH G. SAUDER, ESQUIRE  
 josephsauder@chimicles.com  
 4 CHIMICLES & TIKELLIS LLP  
 One Haverford Centre  
 5 361 West Lancaster Avenue  
 Haverford, Pennsylvania 19041  
 6 610-642-8500  
 Counsel for Plaintiff

7 KAY KYUNGSUN YU, ESQUIRE  
 8 yukay@pepperlaw.com  
 SUSAN KATZ HOFFMAN, ESQUIRE  
 9 PEPPER HAMILTON LLP  
 3000 Two Logan Square  
 10 18th & Arch Streets  
 Philadelphia, Pennsylvania 19103  
 11 215-981-4000  
 Counsel for Defendants

12 EXHIBIT INDEX  
 13 MARKED

15 Defendant's  
 1 EMerging Times 75  
 16 publication dated  
 10/13/97  
 17  
 18 2 EMerging Times 79  
 publication dated  
 10/20/97  
 19  
 20 3 Conectiv Cash Balance 80  
 Plan dated 2/20/98  
 21 4 facts publication, JMC 85  
 215 through 217  
 22  
 23 5 facts publication, PHI 86  
 3365 through 3372  
 24

1 EXHIBIT INDEX (CONTINUED)  
 2 MARKED

3 Defendant's  
 17 Conectiv's Cash Balance 149  
 4 Pension Plan, JMC 8  
 through 19  
 5  
 18 Vanguard Pension 168  
 6 Estimator, JMC 467  
 through 499  
 7  
 19 Conectiv Retirement Plan 175  
 8 Cash Balance Sub-Plan  
 Summary Plan Description  
 9 JMC 77 through 101  
 10 20 Complaint 197  
 11  
 12

13 INSTRUCTIONS NOT TO ANSWER INDEX  
 14 BY MR. MALONE 33  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24

Page 3

Page 5

1 EXHIBIT INDEX (CONTINUED)  
 2 MARKED

3 Defendant's  
 6 Letter to Conectiv 93  
 Management Employee dated  
 12/21/98, JMC 1 through 5  
 5  
 7 Your Conectiv Total 99  
 6 Rewards, JMC 190 through  
 196  
 7  
 8 Conectiv Total Rewards, 102  
 8 The tangible and hidden  
 paychecks, JMC 197  
 9 through 214  
 10 9 InSight publication dated 103  
 March 1999  
 11  
 10 MidWeek Extra, Cash 106  
 Balance Update, June 23  
 1999, JMC 6 through 7  
 13  
 11 InSight publication dated 110  
 July 1999, PHI 3436  
 through 3439  
 15  
 12 InSight Online memo dated 111  
 July 9, 1999, PHI 3440  
 through 3442  
 17  
 13 PowerPoint presentation, 112  
 MWW 219 through 225  
 19 14 Memo, Subject, Cash 117  
 Balance Retirement Plan  
 JMC 20  
 20  
 21 15 E-mail string from Paoli 120  
 to Charles dated 8/21/03  
 JMC 459  
 22  
 23 16 E-mail string between HR 144  
 and Charles, JMC 460  
 through 463  
 24

1 JEROME M. CHARLES, having  
 2 been duly sworn, was examined and  
 3 testified as follows:

4 THE COURT REPORTER: Usual  
 5 stipulations?

6 MR. MALONE: I want the  
 7 witness to read and sign.

8 EXAMINATION  
 9 BY MS. YU:

10 Q. Could you please state your  
 11 name for the record.

12 A. Sure. Jerome Michael  
 13 Charles.

14 Q. Mr. Charles, what's your  
 15 date of birth?

16 A. October 18, 1949.

17 Q. Could you tell me what  
 18 you've done to prepare for your  
 19 deposition today.

20 A. I reviewed the history as  
 21 far as when I started on this  
 22 campaign, read through the  
 23 information that was provided to me  
 24 by my attorney.

Page 6

Page 8

1 Q. Have you ever been deposed  
2 before, been in a situation like this  
3 when someone has taken your  
4 deposition?  
5 A. Yes.  
6 Q. Okay. How many times?  
7 A. Once.  
8 Q. And in what context?  
9 A. There was a litigation  
10 against the company that I worked for  
11 in reference to an accident that  
12 occurred in a municipality, and I was  
13 requested to give a deposition on a  
14 condition of facilities at that  
15 location.  
16 Q. Were you a party in the  
17 litigation?  
18 A. No.  
19 Q. Were you a witness?  
20 A. No.  
21 Q. Have you ever been a party  
22 to a litigation?  
23 A. No.  
24 Q. Just so that we have some

1 MR. MALONE: You need to  
2 keep your voice up a little bit.  
3 THE WITNESS: Oh, okay.  
4 It's a little -- the air conditioning  
5 makes it a little difficult.  
6 BY MS. YU:  
7 Q. Mr. Charles, my name is Kay  
8 Yu and I represent the defendants in  
9 this litigation to which you are a  
10 plaintiff.  
11 When did you decide to  
12 bring the litigation?  
13 MR. MALONE: Object to the  
14 form. You can answer.  
15 THE WITNESS: Approximately  
16 two to three years ago.  
17 BY MS. YU:  
18 Q. Why don't we start with  
19 some background information about  
20 your personal history and your  
21 experience. Can you give me your  
22 educational background.  
23 A. Sure. High school  
24 graduation. Two years of technical

Page 7

Page 9

1 ground rules for the deposition  
2 today, I'm going to be asking you  
3 questions and you're going to be  
4 giving me answers.  
5 If we could both wait for  
6 each other to finish the other  
7 starts, it's harder than it sounds,  
8 that would help the court reporter  
9 out and it will make things go a  
10 little bit quicker.  
11 If you need to take a  
12 break, please just tell me and we can  
13 take a break. All I ask is that if  
14 there is a question pending that you  
15 answer the question before we take a  
16 break.  
17 A. I understand.  
18 Q. If there's anything that  
19 you don't understand about my  
20 question, please tell me and I will  
21 try to make it clearer. But if you  
22 answer we'll all assume that you  
23 understood what the question was.  
24 A. Okay.

1 school. Part-time county college.  
2 Did not finish.  
3 Q. When did you graduate high  
4 school?  
5 A. 1967, June.  
6 Q. And during what years did  
7 you attend school afterwards?  
8 A. Okay. The technical school  
9 was for approximately two years  
10 following that. So that would make  
11 it 1969. Military service, marriage,  
12 then 1980, something like that, I  
13 attended a county college.  
14 Q. How long were you in the  
15 military?  
16 A. Six years.  
17 Q. In what capacity?  
18 A. I was a crypto technician  
19 in the Navy.  
20 Q. And where did you serve?  
21 A. Various locations. The  
22 longest was in NeaMakri, Greece.  
23 Q. So starting in  
24 approximately 1980, can you give me a

Page 10

Page 12

1 description of your work history.

2 A. Sure. I started working  
3 for the company at that time, which  
4 was Atlantic City Electric in  
5 Atlantic City. Then moved through  
6 various positions, different  
7 locations, throughout my career. I'm  
8 not sure if you want every little job  
9 and location listed.

10 Q. Why don't we start with  
11 what your position was when you first  
12 started working for the company.

13 A. I was what was called a  
14 helper, or it's an entry level  
15 position.

16 Q. And what type of work?

17 A. I worked in a meter center  
18 where we calibrated and tested the  
19 electric meters.

20 Q. Were you a member of a  
21 union at that time?

22 A. Yes.

23 Q. What union?

24 A. Local 210.

1 Q. And what did you do in that  
2 position?

3 A. I was a state certified  
4 energy auditor that did energy audits  
5 for businesses and homes.

6 Q. What company were you  
7 working for when you started in that  
8 position?

9 A. Atlantic City Electric.

10 Q. How long did ACE remain  
11 your employer?

12 A. Until the merger.

13 MR. MALONE: Object to the  
14 form. Can we just stipulate that ACE  
15 is Atlantic City Electric?

16 MS. YU: Sure.

17 THE WITNESS: Until the  
18 merger. It remained Atlantic City  
19 Electric.

20 BY MS. YU:

21 Q. Do you recall when the  
22 merger occurred?

23 A. 1998, I believe.

24 Q. And what were the companies

Page 11

Page 13

1 Q. Are you now a member of a  
2 union?

3 A. No, ma'am.

4 Q. How long were you a member  
5 of Local 210?

6 A. Approximately two to three  
7 years. I'm not sure of the dates.  
8 It was quite a while ago.

9 Q. Have you ever been a member  
10 of any other union?

11 A. No, ma'am.

12 Q. And that two- to three-year  
13 period of time, was that continuous?

14 A. Yes, ma'am.

15 Q. How did it come to be that  
16 you were no longer a member of the  
17 union?

18 A. There was an opportunity to  
19 move out of the union into a  
20 non-union position and so I took  
21 advantage of that opportunity.

22 Q. And what was that position?

23 A. Energy services  
24 representative.

1 that merged?

2 A. DelMarVa Power merged,  
3 purchased, choose your words,  
4 Atlantic City Electric.

5 Q. And what was the name of  
6 the company after the merger?

7 A. Conectiv.

8 Q. How long did you remain in  
9 the position of energy services  
10 representative?

11 A. I progressed into a  
12 different job classification within  
13 that department known as a  
14 residential representative.

15 Q. And approximately when did  
16 that occur?

17 A. 1982, '83, something like  
18 that.

19 Q. What is your current  
20 position?

21 A. Senior account  
22 representative.

23 Q. And what are your duties in  
24 that position?

Page 14

Page 16

1 A. I work with large  
2 industrial and commercial customers  
3 to assist them in their energy needs,  
4 calculation of tariffs billing,  
5 reliability, the gamut. Anything  
6 that a customer would need.

7 I guess could you look at  
8 me as the middleman between the  
9 customer and the company.

10 Q. Without getting into  
11 excruciating detail, can you just  
12 sort of describe the way that you  
13 moved from the residential position  
14 that you were describing up to your  
15 current position.

16 A. Sure. Over a period of  
17 years I moved from a residential  
18 representative to a commercial  
19 representative, moved into  
20 engineering, did some engineering  
21 design work for approximately six to  
22 seven years, moved back into the  
23 customer service end as, again, going  
24 back as a commercial representative.

1 MR. MALONE: Can I have  
2 that question and answer read back?

3 (The reporter read back the  
4 following testimony:

5 "Q. When you moved between  
6 customer service and engineering and  
7 back again, were there any changes to  
8 the types of benefits that you  
9 received from your employer?

10 "A. No.")

11 MR. MALONE: Is that  
12 intended to exclude salary, the  
13 question?

14 MS. YU: Yes.

15 MR. MALONE: Thank you.  
16 BY MS. YU:

17 Q. I apologize in advance for  
18 having to ask this question, but I  
19 wanted to ask you if you have had any  
20 criminal background history.

21 A. No, ma'am. None.

22 Q. Sorry. I ask everybody.

23 A. No offense taken.

24 Q. Is there anything that

Page 15

Page 17

1 Things changed within the  
2 company, the merger, moved up to  
3 industrial accounts, and that's sort  
4 of where I am right now.

5 Q. Were all these positions  
6 pretty much in the same business area  
7 of the company?

8 MR. MALONE: Object to the  
9 form. You can go ahead and answer.

10 THE WITNESS: The  
11 engineering department was a  
12 different branch of the company.  
13 Still within the company, but just a  
14 different department call center.  
15 The customer service end, again, is a  
16 different department within the  
17 company.

18 BY MS. YU:

19 Q. When you moved between  
20 customer service and engineering and  
21 back again, were there any changes to  
22 the types of benefits that you  
23 received from your employer?

24 A. No.

1 would preclude you from giving  
2 truthful testimony today?

3 A. No, ma'am.

4 Q. When did you first learn  
5 that your employer was going to adopt  
6 a cash balance plan?

7 A. There was a notification  
8 sent out mid-1999 of a pending  
9 roll-out of changes into the benefit  
10 plans, and there were to be meetings  
11 throughout the company to review that  
12 plan. That's basically all there  
13 was.

14 Q. Were there multiple  
15 communications regarding the cash  
16 balance plan?

17 A. The exact number I don't  
18 remember. There may have been some,  
19 but they were just notices, meeting  
20 will be at this location, meeting at  
21 that location, particular location  
22 within.

23 MS. YU: Can you excuse me  
24 for a minute?

Page 18

Page 20

1 THE WITNESS: Sure.  
 2 (Discussion off the  
 3 record.)  
 4 MR. MALONE: Back on the  
 5 record.  
 6 BY MS. YU:  
 7 Q. Do you recall when the cash  
 8 balance plan became effective?  
 9 A. January 1, 1999.  
 10 Q. Did you receive notices  
 11 regarding the cash balance plan  
 12 before it was implemented?  
 13 A. No. Other than there's a  
 14 change coming.  
 15 Q. I want to ask you some  
 16 questions about the way that you keep  
 17 documents that you get and talk about  
 18 communications regarding benefits in  
 19 general from your employer. I  
 20 imagine you've received  
 21 communications over the course of  
 22 time.  
 23 MR. MALONE: Objection to  
 24 the form of the question. What do

1 things. I keep them in binders, in  
 2 drawers, in files and hang on to  
 3 them. I tend to be a pack rat, so to  
 4 speak.  
 5 Q. Do you keep every written  
 6 communication that you receive  
 7 regarding your benefits?  
 8 A. No.  
 9 Q. How do you decide what to  
 10 keep?  
 11 A. If it appears it was an  
 12 update from something previously  
 13 supplied, then I'll cast out the old  
 14 and keep the new. Anything that  
 15 appears to be significant information  
 16 that I should hang on to, then I  
 17 keep.  
 18 Q. Have you received  
 19 communications from your employer  
 20 regarding benefits, written  
 21 communications, at your work place?  
 22 A. Typically they send you  
 23 things to your home, but they do  
 24 provide occasionally things like

Page 19

Page 21

1 you mean by "communications"?  
 2 Verbal? Written? E-mail? Are you  
 3 embracing all of that or are you just  
 4 taking about just physical material?  
 5 MS. YU: Well, let's start  
 6 with written material.  
 7 MR. MALONE: Okay. Thank  
 8 you.  
 9 BY MS. YU:  
 10 Q. Things that you receive  
 11 that are written communications  
 12 either at your work place or at your  
 13 home. Do you have a system that you  
 14 use to manage all that?  
 15 A. Yes.  
 16 MR. MALONE: Object to the  
 17 form.  
 18 THE WITNESS: Yes.  
 19 BY MS. YU:  
 20 Q. Can you describe what you  
 21 do with those kinds of  
 22 communications.  
 23 A. I have a desk at my home  
 24 that is my little space that I keep

1 through a monthly publication or  
 2 things of that nature at the work  
 3 place.  
 4 Q. Do you have a location  
 5 where you work where you keep  
 6 communications like that?  
 7 A. Yes.  
 8 Q. In addition to the space  
 9 that you have at home?  
 10 A. That is correct.  
 11 Q. Have you provided copies of  
 12 all of that information to your  
 13 attorney?  
 14 A. I'm sorry, I couldn't hear  
 15 you.  
 16 Q. Have you provided copies of  
 17 all those communications to your  
 18 attorney?  
 19 A. Yes.  
 20 Q. Have you ever filed a  
 21 grievance?  
 22 A. No.  
 23 Q. Any complaints or charges  
 24 of any sort against your employer?



Page 22

Page 24

1 MR. MALONE: Object as to  
2 form.

3 THE WITNESS: Not when I  
4 was in the union. There was a  
5 conversation, e-mail that I had with  
6 a prior supervisor of a disagreement.  
7 That was a couple years ago.

8 BY MS. YU:

9 Q. What was the disagreement  
10 over?

11 A. The prior boss that was in  
12 his position had indicated there  
13 would be opportunities for promotions  
14 some time and the opportunity never  
15 arose, and a second supervisor moved  
16 in, and I had asked him if he had  
17 been briefed, and he had indicated  
18 that he didn't have any  
19 conversations.

20 It was more of a hurtful  
21 thing than anything. They didn't  
22 bother to speak to each other before  
23 the other one left. It really wasn't  
24 a formal complaint of any sort.

1 BY MS. YU:

2 Q. Go ahead.

3 A. Okay. And speaking with  
4 coworkers.

5 Q. Can you tell me what you've  
6 looked up on the Internet.

7 A. Sure.

8 MR. MALONE: With respect  
9 to pension issues?

10 MS. YU: Yes.

11 THE WITNESS: Information  
12 on cash balance plans, how they work,  
13 benefits, disadvantages, things of  
14 that nature.

15 BY MS. YU:

16 Q. When was the first time you  
17 did such an Internet search?

18 A. Probably two, three years  
19 ago.

20 Q. Did you do any searches on  
21 the Internet when you were informed  
22 that your employer was going to adopt  
23 a cash balance plan?

24 A. No.

Page 23

Page 25

1 Q. Did you pursue that any  
2 further?

3 A. No.

4 Q. Have you ever researched  
5 pension issues?

6 MR. MALONE: Object to the  
7 form of the question. Could you  
8 expand on what you mean by the term  
9 "research."

10 MS. YU: Well, I'd like to  
11 ask for an answer first and explore  
12 further if there is any confusion.

13 THE WITNESS: Yes.

14 BY MS. YU:

15 Q. What kind of research?

16 A. Internet, monthly  
17 publications, all the --

18 Q. I'm sorry. What was that?

19 A. I'm sorry?

20 Q. You said Internet and  
21 then...?

22 A. Monthly publications.

23 MR. MALONE: Monthly  
24 publications.

1 Q. Did you print out any of  
2 the information that you found on the  
3 Internet?

4 A. I don't believe so. I  
5 think most -- I may have. I really  
6 don't remember. But most of it was  
7 just reading and absorbing what I  
8 found.

9 Q. If you had printed the  
10 information out, would you have kept  
11 it?

12 A. If it was of value, yes.

13 Q. And where would you have  
14 kept it?

15 A. At my home.

16 Q. Did you give copies of that  
17 research to your attorney?

18 A. If I had kept it, I would  
19 have provided it to him.

20 Q. You mentioned monthly  
21 publications.

22 A. Yes.

23 Q. Which monthly publications  
24 are you referring to?

Page 26

Page 28

1 A. I joined AARP and there was  
2 a series of articles in that monthly  
3 publication around cash balance  
4 plans.

5 Q. When did you join AARP?

6 A. When I turned 50, 51,  
7 something like that.

8 Q. And have you received those  
9 monthly publications since you  
10 joined?

11 A. Yes.

12 Q. Do you keep copies of the  
13 publication?

14 A. Sometimes.

15 Q. Did you keep any with  
16 respect to cash balance plans?

17 A. Yes.

18 Q. Did you provide copies of  
19 those documents to your attorney?

20 A. Yes.

21 Q. Then you mentioned that you  
22 have spoken with coworkers.

23 A. Yes.

24 Q. Who have you spoken with?

1 M-E-Y-E-R. Maury Ward, W-A-R-D.  
2 Joseph Fink, F-I-N-K. Annette  
3 Ponzio, P-O-N-Z-I-O. I'm not sure  
4 how that's spelled.

5 Oh, gosh. There were so  
6 many people. I'm trying to remember  
7 all the names here. Rich Simimoni,  
8 S-I-M-I-M-O-N-I. Joe Limosino,  
9 L-I-M-O-S-I-N-O. Gunther Schmidt,  
10 S-C-H-M-I-D-T.

11 MR. MALONE: You might want  
12 to try a hand at the first name on  
13 that one.

14 THE WITNESS: Gunther.  
15 G-U -- it looks like Gunther,  
16 pronounced Gunther. G-U-N-T-H-E-R.  
17 Something like that.

18 Jules Zuccone,  
19 Z-U-C-C-O-N-E. Oh, gosh. There's so  
20 many people. It's like trying to  
21 remember all my relatives.

22 There's probably plenty  
23 more. I just off the top of my head  
24 can't think of them. At least to say

Page 27

Page 29

1 A. List names?

2 Q. Yes.

3 MR. MALONE: With respect  
4 to cash balance plans?

5 MS. YU: Yes.

6 THE WITNESS: Greg  
7 Peterson, George Pinto, Karen Ayars,  
8 Bill Eppler. I could list about 100  
9 people. I don't know how far you  
10 want me to go.

11 MR. MALONE: Keep going.  
12 You're doing a great job.

13 MS. YU: Can we make sure  
14 that the court reporter gets a chance  
15 to take down all the names and if you  
16 have any questions about spelling  
17 let's take care of them now.

18 MR. MALONE: Let's go off  
19 for a second.

20 (Discussion off the  
21 record.)

22 THE WITNESS: A-Y-A-R-S.  
23 E-P-P-L-E-R. Scott Razzie,  
24 R-A-Z-Z-I-E. Michael Meyer,

1 there's lots of folks, lots of folks.

2 BY MS. YU:

3 Q. Let's try to categorize the  
4 people that you've spoken with about  
5 this.

6 A. Okay.

7 Q. Let's start with people  
8 outside of the work place.

9 MR. MALONE: I don't mean  
10 to be niggly, but do you mean people  
11 that were employed there or employees  
12 outside the office?

13 MS. YU: I was about to  
14 start explaining.

15 MR. MALONE: I'm sorry.

16 BY MS. YU:

17 Q. So we're talking about --  
18 and by the way, who is your current  
19 employer?

20 A. Atlantic City Electric,  
21 which is a division of PHI.

22 Q. How do you want to refer to  
23 your employer, PHI or --

24 A. ACE is fine.

Page 30

Page 32

1 Q. ACE. Let's focus on people  
2 who are not employed by ACE.  
3 A. Well, there are different  
4 divisions within PHI. So when you  
5 say employed by ACE, that means those  
6 folks in New Jersey. There are other  
7 folks in DelMarVa. They're also a  
8 division of PHI. So your question is  
9 specifically about ACE employees?  
10 Q. We'll get there. Why don't  
11 we go broader than that. Why don't  
12 we say PHI.  
13 A. Okay. And what was your  
14 question again?  
15 Q. The question is, other than  
16 anyone who is employed by PHI, who  
17 have you spoken with about cash  
18 balance plans?  
19 A. Some of those individuals  
20 have since retired, so I would assume  
21 you would still refer to them as  
22 employees?  
23 MR. MALONE: Well, there's  
24 another complication, which is at the

1 THE WITNESS: Yes, the  
2 daughter. Shannon is the attorney.  
3 Obviously my wife, my  
4 father, friends. You need specific  
5 names?  
6 BY MS. YU:  
7 Q. Well, let's talk about the  
8 conversations that you've had with  
9 your friends. What kind of  
10 conversations have you had about cash  
11 balance plans?  
12 MR. MALONE: Object as to  
13 form. You can answer.  
14 THE WITNESS: I would ask  
15 them if they had any information,  
16 knew anything about cash balance  
17 plans, if their company did, or have  
18 info, things of that nature.  
19 BY MS. YU:  
20 Q. And when did you start  
21 having these kinds of conversations  
22 with your friends?  
23 A. Two to three years ago.  
24 Q. When was the first

Page 31

Page 33

1 time of the conversation were they  
2 employees or retirees. This is  
3 really more confusing than I thought  
4 it would be.  
5 BY MS. YU:  
6 Q. Why don't we start with --  
7 and what I'm really trying to get at  
8 is, have you spoken to your wife,  
9 other than your attorney, you know,  
10 who outside of the work place? I  
11 mean generally that way. So that we  
12 can then focus in on who you have  
13 spoken with through work.  
14 A. Okay. Outside of the  
15 company, Shannon O'Neil, O-N-I-E-L  
16 (sic).  
17 Q. And before you go on, can  
18 you explain who that person is.  
19 A. Shannon O'Neil is the  
20 daughter of a friend who's an  
21 attorney.  
22 MR. MALONE: The daughter  
23 is the attorney or the friend is the  
24 attorney?

1 conversation you had with your wife  
2 about cash balance plans?  
3 A. Probably around the same  
4 time period, two to three years ago.  
5 Q. Did you speak with her  
6 about cash balance plans when the  
7 plan was adopted effective 1999?  
8 A. Other than that the new  
9 company Conectiv had announced they  
10 were making changes to the benefits  
11 package.  
12 Q. What kind of conversations  
13 did you have with Shannon O'Neil  
14 about cash balance plans?  
15 MR. MALONE: Can you answer  
16 that question -- I'm going to direct  
17 him not to answer. She's an  
18 attorney.  
19 BY MS. YU:  
20 Q. Did you retain Shannon  
21 O'Neil as your attorney?  
22 MR. MALONE: Object to the  
23 form of the question.  
24 THE WITNESS: Do I answer

Page 34

Page 36

1 that?

2 MR. MALONE: If you can  
3 understand the question of what she  
4 means by the term retain, you can  
5 answer it. I think she's getting at  
6 whether you consulted with her as an  
7 attorney.

8 THE WITNESS: We had verbal  
9 conversations. I asked her for some  
10 assistance. I did not sign a  
11 commitment with her.

12 BY MS. YU:

13 Q. Were you seeking legal  
14 advice in speaking with Shannon  
15 O'Neil?

16 A. Yes.

17 MR. MALONE: You can answer  
18 that.

19 THE WITNESS: Yes.

20 BY MS. YU:

21 Q. Have you sought legal  
22 advice from any other attorneys?

23 A. She helped me through the  
24 process. She spoke with other firms.

1 New York City, just inquiring as to  
2 their interest in looking at  
3 something like this.

4 Q. What firm was that?

5 A. I don't know, to tell you  
6 the truth. I don't remember it,  
7 because I never got a response back.  
8 So I just let it go.

9 Q. What other attorneys have  
10 you spoken with?

11 A. Other than my current  
12 attorneys?

13 Q. No. I did not say other  
14 than your current attorneys.

15 A. Only Shannon.

16 Q. And your current attorneys?

17 A. Yes.

18 Q. Who are your current  
19 attorneys?

20 A. Chimicles & Tikellis.

21 Q. When was the first  
22 conversation that you had with  
23 Shannon O'Neil?

24 A. Early 2005. No. Probably

Page 35

Page 37

1 MR. MALONE: As she  
2 explores this area, just as a general  
3 caution, she's entitled to ask  
4 questions about you spoke with this  
5 attorney, you spoke with that  
6 attorney.

7 She's not entitled, in my  
8 view, to probe the substance of  
9 discussion that you had with an  
10 attorney in the context of seeking  
11 legal advice, and try to frame your  
12 answers with that in mind.

13 If she asks you a question  
14 that I think is inappropriate I will  
15 let you know.

16 THE WITNESS: Fine.

17 BY MS. YU:

18 Q. What other attorneys, aside  
19 from Shannon O'Neil, have you spoken  
20 with about cash balance plans?

21 A. I had done some additional  
22 research in looking for an attorney  
23 via the Internet and sent an e-mail  
24 to a firm that I had found, it's in

1 late 2004, something like that.  
2 Maybe like 2004.

3 Q. Did you ever correspond in  
4 writing with her?

5 A. No. No. I've known her  
6 since she was that big (indicating).  
7 So it wasn't necessary.

8 MR. MALONE: Can I have  
9 that read back just as a point of  
10 clarification.

11 (The court reporter read  
12 back the following:

13 "Q. Did you ever  
14 correspond in writing with her?

15 "A. No. No. I've known  
16 her since she was that big  
17 (indicating). So it wasn't  
18 necessary.")

19 MR. MALONE: Writing means  
20 e-mail?

21 MS. YU: Uh-huh.

22 MR. MALONE: Does that  
23 change your answer?

24 THE WITNESS: I don't think

Page 38

Page 40

1 we ever exchanged e-mails. It was  
2 strictly verbal.

3 I'm sorry. Yes, she did  
4 send me an e-mail. Yes, she did.

5 BY MS. YU:

6 Q. Do you still have that  
7 e-mail?

8 A. I may not have it any more.  
9 It was very short, a direct reply to  
10 a question. I don't believe I kept  
11 that. Again, I didn't feel that was  
12 necessary, because I know her as well  
13 as my own children.

14 Q. If you kept it, what form  
15 would you have kept it in?

16 MR. MALONE: Object to the  
17 form.

18 BY MS. YU:

19 Q. By that I mean electronic  
20 versus a hard copy.

21 A. Paper. Printed.

22 Q. If you had a hard copy of  
23 that e-mail, would you have provided  
24 it to your current attorney?

1 BY MS. YU:

2 Q. You described different  
3 divisions of PHI. What are those  
4 divisions?

5 A. Engineering, district  
6 engineering, reliability, system  
7 protection, interconnection  
8 agreements, purchasing, support  
9 people, third-party relationship  
10 providers.

11 Q. Earlier you mentioned that  
12 you worked for ACE which was a  
13 division of PHI. Are those different  
14 divisions than what you're listing  
15 here?

16 A. No. Those are departments,  
17 per se.

18 Q. So what you were just  
19 listing are departments?

20 A. Departments within ACE,  
21 DelMarVa Power, and PHI.

22 Q. Let's talk about it from  
23 the level of ACE. What other  
24 divisions of PHI are there that are

Page 39

Page 41

1 A. Yes.

2 MR. MALONE: Object as to  
3 form.

4 BY MS. YU:

5 Q. Sir, you said outside of  
6 the company you've spoken with your  
7 wife --

8 A. Uh-huh.

9 Q. -- with Shannon O'Neil,  
10 with friends. Is there any other  
11 category of people you would describe  
12 as having had conversations with?

13 A. No.

14 Q. Let's talk about the  
15 conversations that you had about cash  
16 balance plans with folks within the  
17 company.

18 MR. MALONE: Object to the  
19 form of the of the question.

20 MS. YU: I'm not done with  
21 my question.

22 MR. MALONE: Okay. My  
23 problem was with the word company.  
24 Just so you know.

1 similar to the ACE division you  
2 referred to?

3 A. PHI is a holding company.  
4 It consists of three power delivery  
5 divisions, Atlantic City Electric,  
6 DelMarVa Power, Pepco Power.

7 In addition to that,  
8 there's also a generation end called  
9 Conectiv Energy, another division  
10 which is a Conectiv energy supply or  
11 something like that, they're a  
12 wholesaler. There's approximately I  
13 believe five divisions of PHI.

14 Q. Have you spoken with  
15 someone from each of the five  
16 divisions that you've just listed  
17 about cash balance plans?

18 A. Definitely two, perhaps  
19 three.

20 Q. Could you tell me which  
21 ones.

22 A. Sure. Obviously ACE,  
23 DelMarVa Power, and Pepco Energy  
24 Services, which is the wholesale end.

Page 42

Page 44

1 Q. Who from Pepco Energy  
 2 Services have you spoken with about  
 3 cash balance plans?  
 4 A. SueAnn Harrell,  
 5 H-A-R-R-E-L-L. Harrell. Something  
 6 along those lines. If I had my phone  
 7 I could tell you.  
 8 Q. Anyone else from Pepco  
 9 Energy Services?  
 10 A. No. She's the only one.  
 11 Q. Who is she?  
 12 A. Who is she? She's a person  
 13 who works in that division who does  
 14 sales, wholesale sales of energy.  
 15 Q. How do you know her?  
 16 A. How do I know her?  
 17 Q. Yes.  
 18 A. She used to work for  
 19 Conectiv. I've met her at meetings  
 20 and often work-related functions.  
 21 Q. Do you work directly with  
 22 her?  
 23 A. Not directly, no.  
 24 Q. Have you ever worked

1 similar conversations with each of  
 2 these individuals from DelMarVa about  
 3 cash balance plans?  
 4 A. Yes. Different degrees.  
 5 Q. Who have you spoken most  
 6 with?  
 7 A. Mike Meyer.  
 8 Q. Anyone else that you've  
 9 spoken with?  
 10 A. Tom Troup. He's another  
 11 one I forgot.  
 12 Q. Do you know how to spell  
 13 his name?  
 14 A. T-R-O-U-P.  
 15 Q. Approximately when was the  
 16 first time you had a conversation  
 17 with someone from DelMarVa about cash  
 18 balance plans?  
 19 A. Two years ago, two and a  
 20 half.  
 21 Q. Let's take your  
 22 conversations with Mike Meyer.  
 23 What's his position?  
 24 A. He handles interconnection

Page 43

Page 45

1 directly with her?  
 2 A. No.  
 3 Q. How many people  
 4 approximately from DelMarVa have you  
 5 spoken about cash balance plans with?  
 6 A. I'd say six to ten.  
 7 Q. Who are those individuals?  
 8 A. I was afraid you were going  
 9 to say that. Mike Meyer, Scott  
 10 Razzie, Rich Aiello, Tom Cole, Bob  
 11 Alles.  
 12 MR. MALONE: That's a new  
 13 name.  
 14 THE WITNESS: A-L-L-E-S.  
 15 Cole is C-O-L-E. That's what I can  
 16 remember for now.  
 17 BY MS. YU:  
 18 Q. Have you had similar  
 19 conversations with each of these  
 20 individuals from DelMarVa about cash  
 21 balance plans?  
 22 A. I'm sorry. I didn't hear  
 23 the beginning part of the question.  
 24 Q. Have you generally had

1 agreements, contracts.  
 2 Q. And how do you know him?  
 3 A. Through work.  
 4 Q. Have you worked directly  
 5 with him?  
 6 A. Not directly. Indirectly.  
 7 He's a resource.  
 8 Q. Tell me about the first  
 9 conversation you had with him about  
 10 cash balance plans.  
 11 A. It was probably at a  
 12 luncheon after a customer meeting he  
 13 and I had together, and we just  
 14 started talking about the pension  
 15 plans, and how he wasn't  
 16 grandfathered and I wasn't  
 17 grandfathered, and sort of along  
 18 those lines.  
 19 Q. When did this conversation  
 20 occur then?  
 21 A. When?  
 22 Q. Yes.  
 23 A. Again, two, two and a half  
 24 years ago, something like that.



Page 46

Page 48

1 Q. Did you raise the issue or  
2 did he?

3 A. I can't say, because when  
4 you're having lunch with someone you  
5 just have conversations. I may have  
6 said it; he may have said it. I  
7 really don't remember.

8 Q. What prompted you to start  
9 having conversations with people  
10 about cash balance plans two or three  
11 years ago?

12 A. When coworkers started to  
13 retire, they would make offhand  
14 comments to me and other people.  
15 Those comments circled around the  
16 difference between the -- because  
17 those folks who were grandfathered  
18 had a choice between two plans, the  
19 old retirement plan and the cash  
20 balance plan.

21 And they would make offhand  
22 comments of the difference monetarily  
23 between those two, significant  
24 difference, and that's what captured

1 MR. MALONE: You're going  
2 to spell those names.

3 THE WITNESS: Yes.

4 BY MS. YU:

5 Q. Who are they?

6 A. Karen Ayars, George Pinto,  
7 Greg Peterson, Annette Ponzio, Rich  
8 Simimoni, Scott Razzie. I don't know  
9 if I said Rich Simimoni. I apologize  
10 if I said it before.

11 MR. MALONE: I think you  
12 had.

13 THE WITNESS: Okay. There  
14 were many more, but right off the top  
15 of my head I can't pull every single  
16 name. If I had known ahead of time I  
17 would have written them all down.

18 BY MS. YU:

19 Q. Do you know whether they  
20 took lump sum benefits?

21 A. Do I know why they took the  
22 lump sum?

23 Q. Whether.

24 A. Oh, whether. No, I don't

Page 47

Page 49

1 my attention.

2 Q. What were those  
3 differences?

4 A. They were in forms of  
5 percentages. In other words, the ACE  
6 plan might be fifty percent more than  
7 the cash balance plan for that  
8 individual.

9 Q. Did you ever get any more  
10 detailed information from them about  
11 the particulars of their benefits?

12 A. I never wanted to ask  
13 anyone how much money they have.  
14 That's not appropriate. What I would  
15 ask them is just to supply me with a  
16 percentage difference which I felt  
17 was reasonable, and they had no  
18 objections to it.

19 Q. How many people did you ask  
20 about that?

21 A. 12, 20 people.

22 MR. MALONE: You know  
23 what's coming next.

24 THE WITNESS: Yes, I do.

1 know that.

2 Q. Just to clarify, you're not  
3 certain what form of retirement  
4 benefit they took; is that right?

5 A. I have to assume the  
6 majority of people who do retire take  
7 the lump sum, but I can't say that  
8 100 percent because that's their  
9 business.

10 Q. So just so I understand,  
11 you didn't ask them specifically that  
12 question, whether they took a lump  
13 sum or some other form?

14 A. They may have volunteered  
15 it, but I didn't ask.

16 Q. Do you recall whether  
17 anybody ever said that they took  
18 anything other than a lump sum?

19 A. There may have been some  
20 conversation one person may have  
21 decided to take an annuity.

22 Q. Do you recall who that  
23 person was?

24 A. May have been -- this is a

Page 50

Page 52

1 new name -- Skip Castaldi,  
2 C-A-S-T-A-L-D-I.

3 Q. Did you also ask him about  
4 the difference between the cash  
5 balance plan and the grandfathered  
6 plan?

7 A. He was a supervisor of mine  
8 at that point. I think it was  
9 inappropriate to ask him.

10 MR. MALONE: Can I hear the  
11 answer?

12 (The reporter read back the  
13 following testimony:

14 "A. He was a supervisor of  
15 mine at that point. I think it was  
16 inappropriate to ask him.")

17 BY MS. YU:

18 Q. So you did not ask him?

19 A. No. He just stated that he  
20 was deciding that he might take the  
21 annuity.

22 Q. Approximately how many  
23 people in the ACE division of PHI  
24 have you spoken with about cash

1 would come up in the conversation, we  
2 started discussing the cash balance  
3 versus the old plan. These were a  
4 mixture of grandfathered,  
5 non-grandfathered employees.

6 Obviously the  
7 non-grandfathered employees were not  
8 real happy with the predicament that  
9 they were in and was hoping that  
10 something would happen to allow them  
11 to be in a better position to retire.

12 MR. MALONE: Can I have the  
13 question and answer read back?

14 (The reporter read back the  
15 following testimony:

16 "Q. Other than the folks  
17 who retired, what kind of  
18 conversations have you had with  
19 people who say are still currently  
20 employed?"

21 "A. When that would come  
22 up in the conversation, we started  
23 discussing the cash balance versus  
24 the old plan. These were a mixture

Page 51

Page 53

1 balance plan?

2 A. 20, 30 people. I don't  
3 know off the top of my head.

4 Q. Is there anyone in addition  
5 to those names that you've listed  
6 that you can recall from the ACE  
7 division that you've had  
8 conversations with?

9 A. I had some e-mails that I  
10 had asked questions concerning of  
11 none of those individuals listed.

12 Q. I'm trying to sort of  
13 categorize the kind of conversations  
14 that you've had, and so far we've  
15 talked about conversations that  
16 you've had with coworkers or others  
17 regarding their pensions.

18 Other than the folks who  
19 retired, what kind of conversations  
20 have you had with people who say are  
21 still currently employed?

22 MR. MALONE: Object to the  
23 form of the question.

24 THE WITNESS: When that

1 of grandfathered, non-grandfathered  
2 employees.

3 "Obviously the  
4 non-grandfathered employees were not  
5 real happy with the predicament that  
6 they were in and was hoping that  
7 something would happen to allow them  
8 to be in a better position to  
9 retire.")

10 MR. MALONE: Thank you.  
11 I'm just having trouble hearing over  
12 the air conditioning sometimes.

13 BY MS. YU:

14 Q. Did you have any other  
15 kinds of conversations about cash  
16 balance plans with employees or  
17 retirees of ACE?

18 MR. MALONE: Object to the  
19 form of the question.

20 THE WITNESS: I'm not sure  
21 what you mean by different  
22 conversations. I don't quite  
23 understand that question.

24 BY MS. YU:

Page 54

Page 56

1 Q. I just want to make sure  
2 that I understand the kinds of  
3 conversations that you had about cash  
4 balance plans. And you said that you  
5 had conversations about grandfathered  
6 versus non-grandfathered.

7 What other things did you  
8 talk about with respect to cash  
9 balance plans?

10 MR. MALONE: Are you  
11 talking about the people at ACE now?

12 MS. YU: Yes.

13 THE WITNESS: We would talk  
14 starting off about the difference.  
15 Then it would migrate to different  
16 subjects of that, how they were not  
17 aware of what had happened.

18 Only through their  
19 experience such as mine years later  
20 after it was rolled out did they come  
21 to the realization that there's a big  
22 difference between the two plans, and  
23 the reason we all kind of agreed to  
24 why we just weren't aware. Really

1 I say select -- small group of union  
2 people who had moved from a non-union  
3 to a union position or union  
4 classification during the time of the  
5 merger and they also were not  
6 permitted or grandfathered. Even  
7 though the rest of the union folks  
8 were, they weren't. Kind of a real  
9 oddball thing that occurred.

10 Q. What group of employees was  
11 that?

12 A. They're in field engineers,  
13 district service engineers, something  
14 along those lines.

15 Q. Did you say that they were  
16 non-union and became union?

17 A. That is correct.

18 Q. What union did they become  
19 part of?

20 A. 210, but I think it's 210 B  
21 or something like that.

22 Q. Have you spoken with  
23 anybody who is part of that sort of  
24 class that you just described?

Page 55

Page 57

1 what happened was the manner in which  
2 it was rolled out, and during that  
3 time it was very trying.

4 Bodies were, not physically  
5 but figuratively, being thrown out  
6 the building. So everyone's main  
7 concern at that point was just trying  
8 to hang on to your job. That was  
9 number one.

10 And it was only later that  
11 they, through other conversations, me  
12 and other employees, that realized  
13 that something just wasn't right.

14 Q. And what is it that's not  
15 right?

16 A. The feeling was that the  
17 class of workers were not treated  
18 fairly.

19 Q. What class of workers?

20 A. Management not  
21 grandfathered, middle management, not  
22 supervision, not high supervision,  
23 middle folks like me not  
24 grandfathered. And a small select --

1 A. Yes.

2 Q. Who?

3 A. Annette Ponzio, one I named  
4 before, Gunther Schmidt, Mel Gregory,  
5 Joe Limosino, Tim Bateman.

6 MR. MALONE: I think  
7 Bateman may be a new name.

8 THE WITNESS: Yeah. That's  
9 a new name. B-A-T-E-M-A-N.

10 Off the top of my head.  
11 There's more but I can't think of  
12 their names.

13 BY MS. YU:

14 Q. Now that they are part of  
15 the union, do you know whether they  
16 participate in the cash balance plan  
17 now?

18 A. They are in the cash  
19 balance plan. They weren't  
20 grandfathered.

21 Q. And these folks are part of  
22 the ACE division; is that right?

23 A. Yes.

24 Q. You said that the cash

Page 58

Page 60

1 balance plan is unfair to the class  
 2 of folks that you were describing,  
 3 which included these folks in the  
 4 moving from non-union to union.  
 5 Do you believe that the  
 6 cash balance plan was unfair -- let  
 7 me back up.  
 8 There's a group of folks  
 9 that you described as middle  
 10 management not grandfathered.  
 11 A. Yes.  
 12 Q. And then there are the  
 13 people who are part of Local 210 B  
 14 now who are also part of the cash  
 15 balance plan and not grandfathered.  
 16 You also said that you felt that the  
 17 cash balance plan was unfair.  
 18 I wanted to get a sense  
 19 from you whether you think it's  
 20 unfair for the same reasons to both  
 21 of those classes of individuals.  
 22 A. Okay. So the question I  
 23 believe you're saying is --  
 24 MR. MALONE: I'm going to

1 the cash balance plan is unfair?  
 2 MR. MALONE: Object to the  
 3 form of the question.  
 4 THE WITNESS: I believe  
 5 there's problems with the funding of  
 6 it. I'm not an expert, but I believe  
 7 there are problems with it.  
 8 BY MS. YU:  
 9 Q. What kind of problems?  
 10 A. I believe it's underfunded.  
 11 Q. What leads you to believe  
 12 that the cash balance plan is  
 13 underfunded?  
 14 A. The foremost reason is if  
 15 this, quote, is an equal or better  
 16 plan, as it was indicated, why would  
 17 it be so much less than the prior  
 18 plan unless it was underfunded, or  
 19 didn't follow the plan rules as to  
 20 how it should be funded.  
 21 MS. YU: Could you read  
 22 that back.  
 23 (The reporter read back the  
 24 following testimony:

Page 59

Page 61

1 object to the form of the question.  
 2 BY MS. YU:  
 3 Q. Is it unfair in the same  
 4 way as to both middle management and  
 5 to the folks in the Local 210 B?  
 6 A. Yes.  
 7 Q. How is the cash balance  
 8 plan unfair, in your view?  
 9 A. Provides less financial  
 10 benefit upon retirement than the old  
 11 plan does.  
 12 Q. Is there any other reason  
 13 that you feel that it's unfair?  
 14 A. No. That's pretty much the  
 15 foremost reason. The other reason I  
 16 use the word unfair is that you have  
 17 a core of people, workers, that have  
 18 no choice in what plan they get  
 19 versus another group who have a  
 20 choice.  
 21 Q. The other group that had a  
 22 choice, who are you referring to?  
 23 A. Anyone who's grandfathered.  
 24 Q. Is there any other way that

1 "A. The foremost reason is  
 2 if this, quote, is an equal or better  
 3 plan, as it was indicated, why would  
 4 it be so much less than the prior  
 5 plan unless it was underfunded, or  
 6 didn't follow the plan rules as to  
 7 how it should be funded.")  
 8 BY MS. YU:  
 9 Q. Do you have any reason to  
 10 believe that the plan is not  
 11 operating under the terms as set  
 12 forth in the plan document?  
 13 MR. MALONE: Objection;  
 14 form and lack of foundation.  
 15 THE WITNESS: I think back  
 16 when the plan was rolled out and  
 17 there was handouts given. It showed  
 18 a projection of an employee, typical  
 19 employee, starting at a point and  
 20 then at requirement ending up at the  
 21 same location, same place  
 22 financially.  
 23 That didn't happen for me  
 24 and it didn't happen for any of the

Page 62

Page 64

1 folks that I've talked to.  
 2 BY MS. YU:  
 3 Q. How has it not happened for  
 4 you?  
 5 A. Through my investigation  
 6 internally, talking with other  
 7 coworkers, specifically coworkers who  
 8 had my age with just a few months  
 9 more service, which allowed them to  
 10 be grandfathered where I was that  
 11 close and did not, so it was a very  
 12 close comparison.  
 13 So I was able to, in  
 14 talking with them, they would  
 15 indicate to me percentage difference  
 16 between those two plans, and I can  
 17 look at my own plan and know that  
 18 something's not right, something's  
 19 not right.  
 20 Q. What did you look at under  
 21 your own plan or your own benefits?  
 22 A. The cash balance amounts.  
 23 Q. Were you comparing it to  
 24 something else?

1 to the form because there's a pronoun  
 2 reference in there that doesn't have  
 3 a antecedent. It may seem ambiguous  
 4 to me.  
 5 If I'm going to instruct  
 6 you not to answer a question, I will  
 7 instruct you not to answer.  
 8 THE WITNESS: Okay.  
 9 MR. MALONE: If you  
 10 understand her answers you should  
 11 answer them whether I object or not.  
 12 If you don't understand her  
 13 questions, it doesn't matter whether  
 14 I object. You have to understand the  
 15 question she asks when you answer it.  
 16 THE WITNESS: Okay. Could  
 17 you repeat that question again.  
 18 MS. YU: I don't think I  
 19 can. Could you read it back, please.  
 20 (The reporter read back the  
 21 following testimony:  
 22 "Q. And was that based on  
 23 your conversations with them that  
 24 they said that they had a certain

Page 63

Page 65

1 A. Comparing it to equal  
 2 employees, same pay grade, just a  
 3 little bit more time within the  
 4 company. Very similar circumstances.  
 5 Q. And was that based on your  
 6 conversations with them that they  
 7 said that they had a certain  
 8 percentage difference between their  
 9 cash balance and their grandfathered  
 10 plan?  
 11 MR. MALONE: Object to the  
 12 form of the question.  
 13 BY MS. YU:  
 14 Q. Did you understand the  
 15 question?  
 16 A. I'm sorry?  
 17 Q. Did you understand the  
 18 question?  
 19 A. I thought --  
 20 MR. MALONE: I just  
 21 objected to the form.  
 22 THE WITNESS: Oh, I'm  
 23 sorry.  
 24 MR. MALONE: I may object

1 percentage difference between their  
 2 cash balance and their grandfathered  
 3 plan?")  
 4 MR. MALONE: Same  
 5 objection.  
 6 THE WITNESS: Yes.  
 7 BY MS. YU:  
 8 Q. I just want to make sure  
 9 that I understand the process that  
 10 you went through.  
 11 Did you compare  
 12 calculations of what your benefit was  
 13 under the cash balance plan with  
 14 actual calculations of what you would  
 15 have been entitled to under the old  
 16 plan?  
 17 A. I tried to do that. Could  
 18 not get the information on the old  
 19 plan. I was informed that they,  
 20 Vanguard the holder, could not  
 21 provide it nor could the HR  
 22 department for PHI provide it.  
 23 Q. So you tried to get that  
 24 information but could not. So you

Page 66

Page 68

1 did not make that comparison?

2 A. I could not make that  
3 comparison at the time other than  
4 looking and talking with equal folks,  
5 my pay grade, time and service, that  
6 were grandfathered.

7 Q. And as you said earlier,  
8 you didn't ask them for their pension  
9 statements or their calculations, did  
10 you?

11 A. I didn't ask them for any  
12 paper copies. Some were more than  
13 willing to verbalize the dollar  
14 difference in each one. People that  
15 I know very well were not  
16 self-conscious about that, but I  
17 never asked people for specific  
18 dollar amounts. It was always  
19 volunteered.

20 Q. I understand that you did  
21 not ask for that specific information  
22 and I understand why. Did anybody  
23 give you voluntarily their pension  
24 calculations?

1 keeping all the names in my head.

2 Mike Meyer, Scott Razzie.

3 MR. MALONE: This is all  
4 dollar amounts? Because that's what  
5 the question was.

6 THE WITNESS: Oh, I'm  
7 sorry. Yeah, see. The dollar  
8 amounts were limited to about three  
9 people, those definitely being Karen  
10 Ayars, Greg Peterson, and there was  
11 one more. I can't remember right now  
12 who that was. I'm sorry.

13 BY MS. YU:

14 Q. So just to clarify the  
15 record, the question was relating to  
16 who gave you their personal  
17 information --

18 A. Yeah.

19 Q. -- regarding the actual  
20 dollar amounts. So you listed two  
21 and there's probably a third whose  
22 name you don't recall right now.

23 A. Yes.

24 MR. MALONE: It's very

Page 67

Page 69

1 A. Yes.

2 MR. MALONE: I was going to  
3 ask whether you meant in a written  
4 form or verbal, but you're probably  
5 going there anyway.

6 MS. YU: Let's go there.

7 MR. MALONE: Sorry.

8 THE WITNESS: That's okay.

9 BY MS. YU:

10 Q. How did they provide you  
11 with that information?

12 A. Verbally.

13 Q. Did anyone give you their  
14 statement or any other written  
15 calculations that were provided to  
16 them?

17 A. No.

18 Q. Who provided you with the  
19 verbal information regarding the  
20 dollar amounts?

21 A. Karen Ayars, George Pinto,  
22 Greg Peterson. Many of those other  
23 people that I mentioned before  
24 that -- I'm having trouble now

1 important to listen to the question  
2 she asks you and answer the question  
3 she asks you because otherwise we'll  
4 get a muddled record like we started  
5 to get there.

6 THE WITNESS: Okay.

7 BY MS. YU:

8 Q. Again, they provided this  
9 information to you verbally; is that  
10 right?

11 A. Yes.

12 Q. Did you make a record of  
13 what they told you?

14 A. Mental record.

15 Q. Did you ever write it down?

16 A. No.

17 Q. What were the dollar  
18 amounts of what these individuals  
19 told you? What information did they  
20 give you?

21 MR. MALONE: I think we  
22 should designate, to the extent that  
23 he talks about dollar amounts and  
24 ties them to people, we should



Page 70

Page 72

1 designate that portion of the  
 2 transcript as confidential.  
 3 I believe that the  
 4 stipulated protective order in place  
 5 permits him to do that.  
 6 So that you understand,  
 7 benefits information, Social Security  
 8 numbers, stuff like that, is not  
 9 supposed to be splashed all over the  
 10 public court record. There's an  
 11 agreement that we've reached that's  
 12 been reduced to the form of an Order  
 13 that allows us to designate a  
 14 document or a portion of testimony as  
 15 confidential.  
 16 That means that if it's  
 17 filed with the Court it has to be  
 18 filed under seal. Any Tom, Dick, and  
 19 Harry that goes and looks in the  
 20 court record can't see it. So with  
 21 that background.  
 22 MS. YU: Yeah. And I have  
 23 no problem with treating this  
 24 information confidentially.

1 Q. Do you know the ages of  
 2 these three people when they retired?  
 3 A. Yes.  
 4 Q. What were they?  
 5 A. Karen Ayars, little over 55  
 6 years old; Greg Peterson is currently  
 7 56 years old; Rick Williams is 58  
 8 years old.  
 9 MR. MALONE: Let's have the  
 10 question and answer read back. I  
 11 don't think they mesh.  
 12 MS. YU: Well, let's just  
 13 talk about it.  
 14 MR. MALONE: That's fine.  
 15 BY MS. YU:  
 16 Q. You said Greg Peterson is  
 17 now 56.  
 18 A. Yes.  
 19 Q. Do you know when he  
 20 retired?  
 21 A. He retired at 54. He was  
 22 provided a package incentive,  
 23 retirement. In other words, he got  
 24 his normal retirement at age 55. So

Page 71

Page 73

1 MR. MALONE: Thank you.  
 2 BY MS. YU:  
 3 Q. Why don't we start with  
 4 Karen Ayars.  
 5 A. Her cash balance amount,  
 6 and again, that was a mental  
 7 remembrance, was somewhere around  
 8 \$180,000, or her lump sum amount for  
 9 the ACE plan was somewhere around  
 10 four and a quarter, 400,000.  
 11 Greg Peterson, his cash  
 12 balance amount was probably somewhere  
 13 around, if I remember right,  
 14 \$300,000; his ACE amount was  
 15 \$600,000.  
 16 There was another person I  
 17 forgot to mention, Rick Williams.  
 18 His numbers were similar to Greg  
 19 Peterson's. I'm not exact on those  
 20 numbers, but there was a significant  
 21 difference between them.  
 22 Q. Was that the third person  
 23 that you received numbers from?  
 24 A. Yes.

1 they continued to pay him his normal  
 2 salary while he was off for that one  
 3 year.  
 4 Q. And was that a special  
 5 retirement package that was offered?  
 6 A. There were incentive  
 7 packages that had been offered since  
 8 the beginning of the mergers to  
 9 select groups, individuals.  
 10 Q. Do you know whether Karen  
 11 Ayars was offered that?  
 12 A. No. She was not provided  
 13 that.  
 14 Q. And Karen Ayars was just  
 15 over 55 when she retired?  
 16 A. She retired at 55, yes. Or  
 17 just over.  
 18 Q. And with respect to Rick  
 19 Williams, you said he was 58. Is  
 20 that now?  
 21 A. No. Now he's 59.  
 22 Q. Okay. So he retired when  
 23 he was 58?  
 24 A. I believe, yes, 58.

Page 74

Page 76

1 MR. MALONE: Is there a  
2 point at which you might be coming up  
3 on a good time to break?

4 MS. YU: This is a good  
5 time.

6 RECESS

7 MR. MALONE: Let's go back  
8 on the record.

9 BY MS. YU:

10 Q. Do you belong to any  
11 association that lobbies or is  
12 associated in any way with pension  
13 reform?

14 A. No.

15 Q. Have you given money to any  
16 such organizations?

17 A. No. Well, if you consider  
18 AARP an organization, yes, but that's  
19 through the subscription. It's not a  
20 cash donation. Just keeping my  
21 subscription.

22 Q. So other than AARP, you're  
23 not a member of any other  
24 association?

1 to an employee. They would be left  
2 on a table, a desk, something along  
3 those lines, for employees to pick up  
4 if they so choose.

5 I don't remember picking up  
6 any of these, or perhaps may have and  
7 just don't remember.

8 MR. MALONE: Off the  
9 record.

10 (Discussion off the  
11 record.)

12 BY MS. YU:

13 Q. The time frame of this  
14 newsletter is October 13, 1997. Do  
15 you recall there being discussions at  
16 that time regarding the merger?

17 A. They would go around the  
18 various locations and make progress  
19 reports. I don't remember any  
20 discussions around benefits at that  
21 point, especially at this time, this  
22 is very early.

23 I believe at that time I  
24 was even in the engineering

Page 75

Page 77

1 A. No.  
2 (Exhibit D-1 was marked for  
3 identification.)

4 BY MS. YU:

5 Q. Mr. Charles, Exhibit D-1 is  
6 a document that says EMerging Times  
7 on the top and it's dated October 13,  
8 1997. Do you recall receiving  
9 newsletters that are called EMerging  
10 Times that look like this?

11 MR. MALONE: Object to the  
12 form of the question.

13 THE WITNESS: No. I don't  
14 remember this.

15 BY MS. YU:

16 Q. You just said you don't  
17 remember this. Are you saying you  
18 don't remember this particular  
19 newsletter or -- I asked a more  
20 general question to you. Do you  
21 recall having received anything  
22 called EMerging Times?

23 A. If there were publications  
24 like this, they weren't directly sent

1 department, and there was no --  
2 nothing earth-shattering that I could  
3 remember that was ever shared, other  
4 than approval is still pending,  
5 things of that nature, you know, the  
6 merger itself is still in its  
7 process.

8 Q. If you take a look at the  
9 first page in the second column of  
10 text.

11 MR. MALONE: Let the record  
12 reflect that the witness is reviewing  
13 what's been marked as D-1 for  
14 identification purposes.

15 BY MS. YU:

16 Q. And in the only full  
17 paragraph that's in the second column  
18 that starts ET, How does the program  
19 do that, do you see that there's a  
20 reference to a new pension plan sort  
21 of halfway down in that paragraph?

22 A. Just this one page?

23 Q. Yeah. Do you see that  
24 there's a reference to a new pension

1 plan?

2 A. There's some mention here,  
3 but it's rather ambiguous. There's  
4 no direct mention of cash balance  
5 plan or anything like that. If I  
6 were to read this in 1997, I wouldn't  
7 really understand what they were even  
8 talking about.

9 Q. Do you recall being  
10 informed in October of '97 that the  
11 old pension plan would be replaced?

12 A. No.

13 MR. MALONE: Kay, my  
14 practice is to have the court  
15 reporter take the original exhibits  
16 and reproduce them with the  
17 transcript with copies as requested  
18 by the parties if that's acceptable  
19 to you.

20 MS. YU: That is fine.  
21 Except for we may need to be  
22 referencing these documents.

23 MR. MALONE: When the  
24 series finish of depositions that

1 MR. MALONE: Let the record  
2 reflect that the witness is examining  
3 what's been marked D-2 for  
4 identification purposes.

5 BY MS. YU:

6 Q. And there is a reference to  
7 a cash balance plan in Exhibit D-2;  
8 is that right?

9 A. I don't know. Where is it?

10 Q. Take a look at the second  
11 page at the first full paragraph.

12 A. I'm sorry, I don't ever  
13 remember seeing this.

14 Q. But it does refer to a cash  
15 balance plan?

16 A. They do mention cash  
17 balance plan and it being in the  
18 design phase.

19 (Exhibit D-3 was marked for  
20 identification.)

21 BY MS. YU:

22 Q. Mr. Charles, Exhibit D-3 is  
23 a document on the first page that  
24 says Conectiv Cash Balance Plan and

1 you're taking. That's fine. That's  
2 why I asked you the question upfront  
3 about whether you were going to  
4 sequentially mark them.

5 (Exhibit D-2 was marked for  
6 identification.)

7 BY MS. YU:

8 Q. Mr. Charles, the exhibit  
9 that has been marked D-2 is another  
10 document with EMerging Times at the  
11 top. This one is dated October 20,  
12 1997.

13 Do you recognize this  
14 document?

15 A. No.

16 Q. Is it possible that you had  
17 the document in October of '97 and  
18 read it but that you don't recall  
19 having read it as you sit here today?

20 MR. MALONE: Object to the  
21 form of the question.

22 THE WITNESS: In reading  
23 through this, I don't ever remember  
24 seeing this document. Ever.

1 the date is February 20, 1998.

2 Do you recognize this  
3 document?

4 A. Yes. I provided this to my  
5 attorney.

6 Q. Did you receive this  
7 document in February of '98?

8 A. No.

9 Q. How did you obtain this  
10 document?

11 A. Through someone that I know  
12 within the company who works  
13 previously in the HR department.

14 Q. Who is that?

15 A. George Bleazard.  
16 B-L-I-Z-Z-A-R-D (sic).

17 Q. When did you receive this  
18 document?

19 A. Late 2005, early 2006. I  
20 don't remember the exact time.

21 Q. I'm sorry. What was the  
22 name of the individual who gave it to  
23 you again?

24 A. George Bleazard.

Page 82

Page 84

1 Q. Tell me about the  
2 conversations you had with Mr.  
3 Bleazard about cash balance plans.  
4 A. I asked him if he had any  
5 information that was provided during  
6 any of the roll-outs, anything at all  
7 that dealt with the cash balance  
8 plan, and he provided this to me.  
9 Q. How many conversations did  
10 you have with Mr. Bleazard about cash  
11 balance plans?  
12 A. Two, three, four.  
13 Q. Did you talk to him about  
14 anything in addition to this document  
15 regarding cash balance plans?  
16 MR. MALONE: Object to the  
17 form of the question.  
18 THE WITNESS: We may have  
19 spoke about other things around the  
20 company, people retiring and such,  
21 and specifically this document, but  
22 that's pretty much it.  
23 BY MS. YU:  
24 Q. What was Mr. Bleazard's

1 was something that was obviously  
2 provided to him that he was willing  
3 to share with me.  
4 Q. Do you know whether Exhibit  
5 D-3 was contained in Mr. Bleazard's  
6 own personal files or whether they  
7 were from the HR files?  
8 A. Again, I don't know. I  
9 assumed it was his own personal  
10 files.  
11 Q. Take a look at the page  
12 that's marked JMC 447 of Exhibit D-3.  
13 MR. MALONE: Which would be  
14 the fourth physical page.  
15 BY MS. YU:  
16 Q. There's some handwritten  
17 notes on that page. Do you know  
18 whose handwriting that is?  
19 A. No, I do not.  
20 Q. I take it then it's not  
21 your handwriting.  
22 A. No, ma'am.  
23 Q. Did Mr. Bleazard tell you  
24 whether or not this information was

Page 83

Page 85

1 position in HR at the time that he  
2 gave this document to you?  
3 A. I'm not sure what his title  
4 or his position is. I just know that  
5 this is the department that he used  
6 to work in. There's still a small  
7 contingent of those folks. He's, I  
8 suppose, one of the remnants of the  
9 original Atlantic City Electric  
10 Company HR department.  
11 Q. Did he provide you with any  
12 other documents?  
13 A. He may have, but I did not  
14 note or document them or label them.  
15 Q. What did he tell you about  
16 this document?  
17 A. Other than it was something  
18 that he had and was willing to  
19 provide it to me.  
20 Q. Did Mr. Bleazard explain to  
21 you how he came into possession of  
22 Exhibit D-3?  
23 A. I don't remember exactly  
24 how he came about it. I assume it

1 presented in February of 1998?  
2 A. When he supplied this to  
3 me, he did not indicate the exact  
4 date on which he received it. Only  
5 that this is the date that's on it.  
6 Q. Did he tell you whether he  
7 received it at a meeting where this  
8 information was presented?  
9 A. No.  
10 Q. When was the first meeting  
11 that you attended regarding cash  
12 balance plans?  
13 MR. MALONE: I believe  
14 that's asked and answered, but go  
15 ahead.  
16 THE WITNESS: Okay. Not  
17 exactly sure the exact date, but I do  
18 believe it was late 1999, middle,  
19 late '99.  
20 (Exhibit D-4 was marked for  
21 identification.)  
22 BY MS. YU:  
23 Q. Exhibit D-4 is a document  
24 that says Facts on the top and the

Page 86

Page 88

1 pages are numbered JMC 215 through  
2 217. Do you recognize this document?

3 A. It looks familiar, but I'm  
4 not sure if it's something that was  
5 provided to me recently. I believe  
6 that's when I saw it. I'm not sure.  
7 (Exhibit D-5 was marked for  
8 identification.)

9 BY MS. YU:

10 Q. Mr. Charles, Exhibit D-5 is  
11 another document that starts Facts on  
12 the front page. The document that  
13 was D-4 was only three pages and it  
14 looked to me that there were some  
15 pages missing, so Exhibit D-5, if you  
16 can just verify for me that the first  
17 page is the same as in D-4.

18 MR. MALONE: Take your time  
19 and look over it carefully.

20 Let the record reflect that  
21 the witness is holding D-4 and D-5  
22 side by side and comparing the face  
23 page of each.

24 THE WITNESS: They appear

1 page PHI 3367.

2 MR. MALONE: And that the  
3 witness is examining them side by  
4 side.

5 THE WITNESS: They seem to  
6 be similar. Again, there appears to  
7 be a difference in the font. There's  
8 a number missing on the -- this one  
9 on the bottom left, this one has a  
10 number two on it and this has no  
11 number.

12 MS. YU: Exhibit D-4?

13 MR. MALONE: Could you say  
14 it again.

15 THE WITNESS: On Exhibit  
16 D-5 on the bottom left-hand corner  
17 below the asterisk statement has the  
18 number two; this one has no number  
19 two.

20 BY MS. YU:

21 Q. So D-4 does not have the  
22 number two.

23 A. In that same location.

24 Q. But otherwise they appear

Page 87

Page 89

1 to be the same. There may be some  
2 difference in the font. That may be  
3 for some reason, I don't know, copy  
4 machine may have shrunk down or I  
5 don't know. But they appear to be  
6 the same.

7 BY MS. YU:

8 Q. I'm sorry, in Exhibit D-5  
9 the pages are a little out of order,  
10 but page two and three of D-5 are  
11 backwards.

12 The second page of D-4,  
13 could you compare that to the page  
14 that has on the bottom PHI 3367.

15 A. Is this one you're  
16 referring to?

17 MR. MALONE: Go to D-4.

18 MS. YU: D-4. Second page  
19 of D-4.

20 MR. MALONE: And then let  
21 the record reflect that I'm going to  
22 turn to the third physical page of  
23 what's been marked Exhibit D-5.

24 MS. YU: Which is actually

1 to be similar?

2 A. Again, the basic difference  
3 being in the font.

4 Q. But the substance, actual  
5 words appear to be the same?

6 A. Appears to be the same,  
7 yes.

8 Q. And if you could do that  
9 again with the last page, the third  
10 page of D-4, and if you could compare  
11 that to Exhibit D-5, and the PHI  
12 number on the bottom right-hand  
13 corner is 3368.

14 A. What is it?

15 Q. 3368.

16 MR. MALONE: Let the record  
17 reflect that the witness has before  
18 him Exhibit D-4 page JMC 00217 and  
19 Exhibit 5, PHI 003368, and he's  
20 examining the two.

21 THE WITNESS: Again, they  
22 appear to be the same except the font  
23 is either a bit smaller on D-4 than  
24 on D-5.

Page 90

Page 92

1 BY MS. YU:

2 Q. But the substance of the  
3 information appears to be the same?

4 A. Yes. They appear to have  
5 the same information.

6 Q. Take a look at the first  
7 page of D-5, the last paragraph --  
8 last two paragraphs there's a title  
9 above it New Cash Balance Pension  
10 Plan, and the last sentence says, The  
11 new cash balance pension plan will  
12 take effect January 1st, 1999.

13 Do you see that?

14 A. Yes, I do.

15 Q. Do you recall whether you  
16 received this document in the spring  
17 of 1998?

18 MR. MALONE: Objection.

19 Lack of foundation.

20 THE WITNESS: I don't  
21 remember if I received this or when I  
22 would receive this.

23 BY MS. YU:

24 Q. Does that mean that it's

1 when it will occur.

2 Q. Right. When it will. If  
3 it had already taken effect, and this  
4 was in fact published after the cash  
5 balance plan became effective,  
6 wouldn't they have said it in the  
7 past tense rather than the future  
8 tense?

9 MR. MALONE: Objection.

10 Calls for speculation on the witness.

11 May have been written at one time and  
12 published at another.

13 THE WITNESS: I'm not an  
14 English major. So anything is  
15 possible in the way this was written.  
16 It could have been written up late  
17 1999, published after January --  
18 written up in 1998 and then published  
19 after 1999. I have no idea.

20 BY MS. YU:

21 Q. And it also could have been  
22 published in 1998 and distributed in  
23 1998?

24 A. That's a possibility. I

Page 91

Page 93

1 possible that you received Exhibit  
2 D-5 in 1998?

3 MR. MALONE: Object to the  
4 form.

5 THE WITNESS: Since there's  
6 no date on this, I don't know when.  
7 I would assume that this was probably  
8 put out after January 1 of 1999. So  
9 I don't know when this would have  
10 been provided. Again, we --

11 BY MS. YU:

12 Q. Why do you assume that it  
13 was produced after January 1st, '99?

14 A. Because it says Effective  
15 January 1, 1999. I would assume they  
16 would put that out afterwards.

17 Q. If you take a look at this  
18 sentence it says, The new cash  
19 balance plan will take effect January  
20 1st of 1999.

21 A. Yes.

22 Q. Does that indicate to you  
23 that it hasn't yet occurred?

24 A. No. It indicates that's

1 don't know.

2 (Exhibit D-6 was marked for  
3 identification.)

4 BY MS. YU:

5 Q. Exhibit D-6 is a document  
6 that is dated December 21, 1998, and  
7 it is number JMC 1 through 5. Mr.  
8 Charles, do you recognize this  
9 document?

10 A. I may have seen it since  
11 I've made contact with my attorney.  
12 I don't remember if I provided it or  
13 someone else may have provided it. I  
14 don't remember in 1998 if I received  
15 this or not.

16 Q. Just to clarify, so it's  
17 possible that you received this in  
18 December of 1998, but you don't  
19 recall one way or the other as you  
20 sit here today?

21 A. It's possible that I  
22 received it. I don't remember  
23 receiving it. Information at this  
24 time during this merger was fast and



Page 94

Page 96

1 furious and the amount of information  
2 that was being thrust out.

3 So I can't say absolutely  
4 100 percent I never saw it; I just  
5 don't remember ever seeing it.

6 Q. If you take a look at  
7 Exhibit D-6 on page JMC 3.

8 MR. MALONE: Let the record  
9 reflect that the witness has turned  
10 to the designated page of Exhibit  
11 D-6.

12 BY MS. YU:

13 Q. The very top of the page  
14 says Update of Conectiv Facts and in  
15 parentheses it says Originally  
16 published in the spring of 1998. Do  
17 you see that reference?

18 A. Yes, I do.

19 Q. Now, if you can go back to  
20 Exhibit D-5. Could you compare the  
21 information that is contained in  
22 Exhibit D-6 starting on JMC 3 where  
23 it says New Cash Balance Pension  
24 Plan.

1 you could turn to the page that's on  
2 the bottom it says PHI 3367.

3 MR. MALONE: Let the record  
4 reflect that the witness has turned  
5 to the indicated page of Exhibit D-5,  
6 which is technically the second page  
7 of the document but is appearing as  
8 the third page of this exhibit.

9 BY MS. YU:

10 Q. Can you just confirm for me  
11 that the titles of the section are  
12 the same as appears, starting with  
13 the second paragraph, on Exhibit D-6,  
14 JMC 3. So for example, D-5 says  
15 Benefit Easier to Understand, and  
16 that heading is contained on Exhibit  
17 D-6.

18 MR. MALONE: Let the record  
19 reflect that the witness is examining  
20 and making a comparison of the  
21 referenced portions of D-5 and D-6.

22 THE WITNESS: Some of it's  
23 the same in that paragraph. Looks  
24 like there's a few things that are

Page 95

Page 97

1 Can you compare that to the  
2 first page of Exhibit D-5 where it  
3 says New Cash Balance Pension Plan  
4 and tell me whether it appears to be  
5 the same.

6 A. Are you talking about D-5  
7 cover?

8 MR. MALONE: The witness  
9 indicating for the record the cover  
10 page to Exhibit D-5, specifically the  
11 final section of the three sections  
12 of text that appears there.

13 BY MS. YU:

14 Q. At the bottom of the page  
15 it says New Cash Balance Pension  
16 Plan. Compare the paragraph of  
17 information there with that in D-6 on  
18 JMC 3.

19 A. Except for a few minor  
20 differences in font, I believe  
21 there's one word that's italicized in  
22 one but not in the other, they appear  
23 to be the same to me.

24 Q. Okay. In Exhibit D-5, if

1 slightly different again with the  
2 font.

3 BY MS. YU:

4 Q. Just to make this a little  
5 easier, can we just compare the  
6 headings.

7 MR. MALONE: I'll tell you  
8 what I'm going to do. I haven't  
9 flyspecked it, but I'm prepared to  
10 stipulate that the first -- I'm going  
11 to do it with D-4 because I think it  
12 will give you a cleaner record. If  
13 you look at D-4 for a second.

14 THE WITNESS: I have --

15 MR. MALONE: You have D-5,  
16 but I'm going to offer her a  
17 stipulation because otherwise it's  
18 going to take all day. I am prepared  
19 to stipulate that, although I have  
20 not flyspecked the document, it  
21 appears to me that the section of  
22 Exhibit 6 commencing on JMC 3  
23 through --

24 MS. YU: We can't do it

Page 98

Page 100

1 with D-4.

2 MR. MALONE: We can't do it  
3 with D-4?

4 MS. YU: No. We have to do  
5 it with D-5.

6 MR. MALONE: D-5. It  
7 appears to me that D-5 is  
8 substantially similar to the portion  
9 of D-6 which commences upon JMC 0003  
10 thereafter, and there may be  
11 differences in font, there may be  
12 incidental differences in emphasis,  
13 but in overall substance and thrust  
14 of it I believe that they're  
15 substantially similar if that's a  
16 satisfactory stipulation for your  
17 purposes.

18 Do you want that read back,  
19 Ms. Yu?

20 MS. YU: No. If we  
21 included in the stipulation that it  
22 was originally published in spring of  
23 1998.

24 MR. MALONE: I can't

1 which on the first page says, Your  
2 Conectiv Total Rewards, and there's  
3 1998-99 on the front page. The  
4 document pages are numbered JMC 190  
5 through 196.

6 Mr. Charles, do you  
7 recognize this document?

8 A. It looks familiar. Again,  
9 I don't remember whether receiving  
10 this directly to me or it was  
11 provided to me by someone else within  
12 the company.

13 Q. Again, just to clarify,  
14 it's possible that you received this  
15 document in '98 or '99 and you don't  
16 recall that sitting here today?

17 A. Again, that's possible, but  
18 I cannot tell you for sure.

19 Q. If you take a look at D-7,  
20 on the third page of the exhibit,  
21 which is JMC 192, do you see that the  
22 numbered page is 24?

23 A. Yes.

24 MR. MALONE: The witness

Page 99

Page 101

1 stipulate to that, because your  
2 client hasn't dated the D-5 document.  
3 He doesn't know when he received it.  
4 I'm prepared to say that D-6 suggests  
5 perhaps that this was published in  
6 the spring of 1998, but I don't know.  
7 This could be incorrect, D-6.

8 So the substance of it I  
9 agree is substantially identical. I  
10 cannot speak to or stipulate to the  
11 date of D-5 based on the record as I  
12 know it.

13 MS. YU: We will accept  
14 that stipulation.

15 MR. MALONE: Thank you.

16 MS. YU: Thank you.

17 MR. MALONE: You get extra  
18 points for keeping your documents in  
19 order. It makes everybody's life  
20 easier.

21 (Exhibit D-7 was marked for  
22 identification.)

23 BY MS. YU:

24 Q. Exhibit D-7 is a document

1 has turned to the referenced page of  
2 Exhibit D-7.

3 BY MS. YU:

4 Q. Do you know whether you  
5 have in your possession a copy of the  
6 full document of the pages before  
7 page 24?

8 A. You're asking me if I have  
9 copies of this document before this  
10 page 24?

11 Q. Yes.

12 A. I may have, but, again, I  
13 don't -- I can't tell you for sure.  
14 If -- and I assume this came from me,  
15 I would have supplied everything I  
16 had to my attorney.

17 MR. MALONE: As a general  
18 matter, we didn't excerpt a document.  
19 If somebody gave us a whole document  
20 that might have related to other  
21 portions of other benefit packages, I  
22 think we gave you the whole thing.

23 It may be that some  
24 instance we were provided with

Page 102

Page 104

1 excerpts, but we did not excerpt on  
2 our own unless our copy machine did  
3 it, which I doubt.

4 (Exhibit D-8 was marked for  
5 identification.)

6 BY MS. YU:

7 Q. Exhibit D-8 appears to be a  
8 deck of slides and the first page  
9 says Conectiv Total Rewards, The  
10 Tangible and Hidden Paychecks.

11 Do you recognize this  
12 document?

13 A. It looks familiar, but,  
14 again, I don't remember receiving it  
15 directly from the company. It may  
16 have been provided to me by a fellow  
17 employee. It may have been something  
18 I pulled out of my personal records.  
19 I can't tell you for sure.

20 Q. If you turn to page JMC 204  
21 of Exhibit D-8, there's some  
22 handwriting on that page.

23 A. That's not my handwriting.

24 Q. That's not your

1 remember. It doesn't bring any  
2 memory back to me.

3 Q. If you look at the second  
4 page of Exhibit D-9.

5 MR. MALONE: Let the record  
6 reflect that the witness is turning  
7 to the indicated page on Exhibit D-9.

8 BY MS. YU:

9 Q. Sort of in the middle of  
10 the page on the right-hand side it  
11 says June/July 1999.

12 MR. MALONE: Objection to  
13 the form of the question. I believe  
14 you mean left-hand side.

15 MS. YU: I'm sorry.

16 MR. MALONE: That's okay.

17 BY MS. YU:

18 Q. Let's do it over.

19 On the second page of  
20 Exhibit D-9 on the left-hand side  
21 toward the bottom of the page it says  
22 June/July 1999, Cash Balance Pension  
23 Plan Statements, and it indicates  
24 that statements will be provided in

Page 103

Page 105

1 handwriting?

2 A. No.

3 Q. Take a look at the next  
4 page. Is that your handwriting?

5 A. No.

6 (Exhibit D-9 was marked for  
7 identification.)

8 BY MS. YU:

9 Q. Exhibit D-9 says InSight on  
10 top. It's dated March 1999. Do you  
11 recall receiving communications from  
12 Conectiv that look like this and say  
13 InSight on the top in this format?

14 A. Yes. I remember there were  
15 some publications like this. Again,  
16 they were not directly addressed to  
17 individuals. Brought into the work  
18 site and put on the table, pick one  
19 up, you know.

20 Q. Do you recall whether you  
21 saw this particular newsletter marked  
22 as Exhibit D-9 in March of 1999?

23 A. I don't remember this. I  
24 could have looked at it. I don't

1 that time frame.

2 Do you recall whether you  
3 received a statement in June or July  
4 of 1999?

5 A. I know in subsequent years  
6 we would get one at the end of the  
7 year, beginning of the year. I may  
8 have received a notification, a  
9 letter, document of some sort  
10 indicating my starting balance, but I  
11 don't remember.

12 Q. Below that in Exhibit D-9  
13 it says July/August Cash Balance  
14 Pension Plan Meetings for Employees.  
15 Do you recall attending any meetings  
16 in July or August of 1999 regarding  
17 cash balance?

18 A. Yes.

19 MR. MALONE: This appears,  
20 this being Exhibit D-9, appears to be  
21 an incomplete document. I note the  
22 second page actually is numbered six,  
23 for the record.

24 (Exhibit D-10 was marked

Page 106

Page 108

1 for identification.)

2 BY MS. YU:

3 Q. Exhibit D-10 says Mid Week  
4 Extra on the top and Cash Balance  
5 Update. It's dated June 23, 1999.  
6 Do you recognize this document, Mr.  
7 Charles?

8 A. No. I believe that the  
9 delivery of this was perhaps via the  
10 Internet. I'm not sure. Or the  
11 intranet that we have. I may have  
12 seen it. I just -- again, it may  
13 have been information that was  
14 provided to me that I forwarded to my  
15 attorney.

16 Q. Tell me about the intranet.

17 A. The company has an internal  
18 web system called the intranet in  
19 which they can put publications such  
20 as this, updates, things like --

21 MR. MALONE: Indicating for  
22 the record Exhibit D-10. Continue.  
23 I'm sorry.

24 THE WITNESS: That form of

1 Q. So the first paragraph,  
2 again, in Exhibit D-10 refers to  
3 opening statements. Can you take a  
4 look at that paragraph for me.

5 MR. MALONE: Let the record  
6 reflect that the witness is examining  
7 the first page of what's been marked  
8 Exhibit D-10.

9 THE WITNESS: Do you have a  
10 question?

11 BY MS. YU:

12 Q. I will be asking one. So  
13 it refers to opening statements being  
14 sent to employees' homes beginning  
15 next week, which would be end of  
16 June, beginning of July 1999, right?

17 A. That's what it says.

18 MR. MALONE: Objection to  
19 the form of the question.

20 BY MS. YU:

21 Q. There's also references to  
22 the meetings. You attended one of  
23 those meetings; is that right?

24 MR. MALONE: Object to the

Page 107

Page 109

1 communication started after the first  
2 merger with Conectiv. Not everybody  
3 had access to it so typically what  
4 would happen within a building  
5 someone who did have the access if  
6 they felt it was important would  
7 print it, put it on a bulletin board.

8 BY MS. YU:

9 Q. Did you have access?

10 A. At this time, 1999? I  
11 can't remember if I did or not.  
12 There was a transition there where  
13 people were being released, what we  
14 call administrative help, that used  
15 to type letters and things like that  
16 for people like me.

17 It was also during a period  
18 of time that I may have been leaving  
19 the engineering department, moving in  
20 to the -- back into customer service.

21 I believe at that time I  
22 may or may not -- I can't remember if  
23 I had a PC or not that would have any  
24 access to that.

1 form.

2 THE WITNESS: Yes.

3 BY MS. YU:

4 Q. If you look at the third  
5 paragraph of D-10 it says, These  
6 meetings will be the best source of  
7 information on the plan and  
8 employees' opening balances. Recent  
9 stories in the national media have  
10 raised concerns about some cash  
11 balance plans that do not offer the  
12 same level of financial security or  
13 grandfathering provisions as  
14 Conectiv's Cash Balance Pension Plan.  
15 One part of the presentation will  
16 address these concerns and  
17 demonstrate how Conectiv's plan is  
18 different.

19 Do you recall being  
20 provided this information in June of  
21 1999?

22 MR. MALONE: "This  
23 information" referencing...?

24 MS. YU: What I just read

Page 110

Page 112

1 into the record.  
 2 THE WITNESS: I don't  
 3 recall it being part of the  
 4 presentation where I attended.  
 5 MR. MALONE: Read back the  
 6 question. Listen to the question. I  
 7 don't think you're answering her  
 8 question.  
 9 (The reporter read back the  
 10 following testimony:  
 11 "Q. Do you recall being  
 12 provided this information in June of  
 13 1999?")  
 14 THE WITNESS: No. I don't  
 15 remember.  
 16 (Discussion off the  
 17 record.)  
 18 MR. MALONE: Let's go back  
 19 on the record.  
 20 (Exhibit D-11 was marked  
 21 for identification.)  
 22 BY MS. YU:  
 23 Q. Mr. Charles, Exhibit D-11  
 24 is another newsletter that says

1 (Luncheon recess at  
 2 12:08 p.m.)  
 3 (Testimony resumed at  
 4 1:20 p.m.)  
 5 (Exhibit D-13 was marked  
 6 for identification.)  
 7 BY MS. YU:  
 8 Q. Mr. Charles, Exhibit D-13  
 9 appears to be a document with some  
 10 PowerPoint slides and the documents  
 11 were numbered MWW 219 through 225.  
 12 Have you seen this document before?  
 13 A. Yes. I believe that this  
 14 was something I received from an  
 15 employee, a coworker.  
 16 Q. And from whom?  
 17 A. I honestly don't remember.  
 18 Q. The date on it is July of  
 19 1999 and it's entitled Conectiv Cash  
 20 Balance Pension Plan. Do you recall  
 21 whether this was part of a  
 22 presentation at a meeting that you  
 23 attended in that time frame?  
 24 A. It may have been, but I

Page 111

Page 113

1 InSight on the top. This one is  
 2 dated July 1999. Do you recall  
 3 whether you reviewed this newsletter  
 4 that's Exhibit D-11 in or about July  
 5 of 1999?  
 6 A. I don't remember this  
 7 particular publication being provided  
 8 to me. I remember that there were  
 9 publications called InSight, but this  
 10 particular one, I can't tell you as  
 11 to whether I ever saw it or not.  
 12 (Exhibit D-12 was marked  
 13 for identification.)  
 14 BY MS. YU:  
 15 Q. Exhibit D-12 is a document  
 16 that says InSight Online on the top.  
 17 Is this information that would appear  
 18 on the Internet?  
 19 A. On the intranet, the  
 20 internal network system. I would  
 21 assume so since it says so on the  
 22 document.  
 23 MS. YU: Why don't we go  
 24 off the record.

1 don't remember this format, this type  
 2 of format.  
 3 Q. What do you remember from  
 4 that meeting?  
 5 A. The roll-out meeting? Is  
 6 that the question?  
 7 Q. The meeting that occurred  
 8 sometime approximately in July of  
 9 1999 regarding the cash balance plan.  
 10 A. The meeting was held in  
 11 our --  
 12 MR. MALONE: I'm going to  
 13 object to the form of the question,  
 14 the use of the word July. I think he  
 15 gave you an estimate or range. I  
 16 don't think he said it was July.  
 17 Go ahead and answer the  
 18 question.  
 19 BY MS. YU:  
 20 Q. And assuming it's that  
 21 meeting that took place approximately  
 22 in that time frame.  
 23 A. The meeting that I had  
 24 attended for the roll-out, I remember

Page 114

Page 116

1 it was in our Carneys Point Building  
2 in a multipurpose cafeteria meeting  
3 room that was utilized.

4 There was a PowerPoint  
5 presentation that was put up onto a  
6 screen, and I believe that there was  
7 a hand-out given that mirrored the  
8 PowerPoint presentation.

9 The presentation was put on  
10 by low-level employees, people like  
11 myself, that just simply went through  
12 the slides and read them off and  
13 briefed the people in the meeting  
14 that this is the new benefit plan as  
15 it's being rolled out.

16 There were different  
17 slides, some of them about the  
18 medical, dental, vision, and I  
19 believe there was something in there  
20 that referred to the grandfathering  
21 and the cash balance plan, the whole  
22 plan.

23 Q. Do you recall who  
24 specifically was doing the

1 Q. Do you recall whether Jim  
2 Kremmel was one of the individuals  
3 giving the presentation?

4 A. I don't remember particular  
5 names or -- or the people themselves,  
6 other than I knew they were not  
7 senior management. I knew they were  
8 company people.

9 Q. Can you review the slides  
10 that are contained in Exhibit D-13  
11 and tell me whether that refreshes  
12 your recollection as to whether these  
13 are the slides that were presented.

14 A. It looks familiar. I can't  
15 say 100 percent that each and every  
16 one of these was reviewed. I do  
17 remember it was a PowerPoint  
18 presentation.

19 Q. If you look at the second  
20 page of D-13.

21 MR. MALONE: Indicating for  
22 the record MWW 00220.

23 BY MS. YU:

24 Q. And the very first slide on

Page 115

Page 117

1 presentation?

2 A. No, I don't. I definitely  
3 know that it was not a senior member  
4 of the organization. I would assume  
5 it was a mid-level team member. At  
6 that time there were a lot of, quote,  
7 teams that were formed to look on  
8 different aspects of the business and  
9 what directions and research on  
10 different subjects.

11 And I assume that one of  
12 those groups was part of the benefits  
13 package and was one of those  
14 individuals or that group that  
15 presented the roll-out of that  
16 benefits package.

17 Q. Was there more than one  
18 individual giving the presentation?

19 A. Yes. There were two or  
20 three people, and I don't remember  
21 the exact number. I know -- I  
22 believe it was a mixture of men and  
23 women. I don't remember the exact  
24 makeup.

1 the upper left-hand corner says, New  
2 plan is a cash balance plan and cash  
3 balance plans are controversial.  
4 Underneath it says Series of Wall  
5 Street Journal articles and then  
6 congressional hearings.

7 Do you recall this  
8 information being provided to you in  
9 the summer of 1999 time frame?

10 A. No. I don't remember that.  
11 I'm pretty sure that slide was not  
12 included in the presentation, but I  
13 can't be sure.

14 Q. The third page of D-13  
15 which is MWW-221, there's some  
16 handwritten notes on the bottom. Is  
17 that your handwriting?

18 A. No.

19 (Exhibit D-14 was marked  
20 for identification.)

21 BY MS. YU:

22 Q. Exhibit D-14 is a  
23 single-page document. It says as the  
24 subject Cash Balance Retirement Plan



Page 118

Page 120

1 and says Business Practice effective  
2 1/1/99 for Management Employees.

3 Mr. Charles, do you  
4 recognize this document?

5 A. I recognize it in that it  
6 was probably something that I either  
7 had in my records or was provided to  
8 me from someone else, a coworker.  
9 But I don't remember when it was  
10 handed out and reading it at that  
11 particular time.

12 Q. Do you know where this  
13 information came from?

14 MR. MALONE: I object to  
15 the form of the question. Are you  
16 asking where the document came from  
17 or where the information conveyed in  
18 the document came from?

19 MS. YU: I don't know yet.

20 MR. MALONE: Okay.

21 THE WITNESS: Okay. Could  
22 you ask that question again? Because  
23 I'm not sure what you're asking.

24 BY MS. YU:

1 for identification.)

2 BY MS. YU:

3 Q. Mr. Charles, Exhibit D-15  
4 is an e-mail trail of two messages.

5 A. Uh-huh.

6 MR. MALONE: You have to  
7 verbalize your responses. Uh-huh and  
8 uh-uh won't come up clearly.

9 THE WITNESS: Yes.

10 MR. MALONE: Thank you.

11 BY MS. YU:

12 Q. The first e-mail that's on  
13 the bottom is from you to Conectiv  
14 HR; is that right?

15 A. Yes.

16 Q. And do you recall sending  
17 this message?

18 A. I'm sorry?

19 Q. Do you recall sending this  
20 message?

21 A. Yes.

22 Q. And is the correct time and  
23 date on the message, August 20, 2003,  
24 at 11:14 a.m.?

Page 119

Page 121

1 Q. Well, actually, as I was  
2 asking the question, I notice at the  
3 bottom it says Back to Top on the  
4 bottom of the page.

5 A. Uh-huh.

6 Q. Do you know whether this  
7 information came off the Internet?

8 A. I would have to assume it  
9 did with that Back to top. That's  
10 the impression you would get. It may  
11 have been on the -- some e-mail or  
12 whatever. I don't know. I can  
13 assume that.

14 Q. Do you recall looking at  
15 any information on the intranet that  
16 would include this formatting or this  
17 information?

18 MR. MALONE: Object to the  
19 form. Is that intranet?

20 MS. YU: Intranet.

21 THE WITNESS: I don't  
22 remember. I don't remember. I'm  
23 sorry.

24 (Exhibit D-15 was marked

1 A. I would have to say yes.

2 Q. In the first paragraph you  
3 state, Are you following the current  
4 events of the class action lawsuit by  
5 the employees of IBM as it pertains  
6 to IBM's decision to convert their  
7 employees' retirement plan into the  
8 cash balance plan?

9 What prompted you to send  
10 this message?

11 A. The article that I read in  
12 AARP magazine.

13 Q. Do you read the monthly  
14 publication from AARP regularly?

15 A. Yes.

16 Q. Would you say that you read  
17 every monthly publication that you  
18 receive from them?

19 MR. MALONE: Object as to  
20 form.

21 THE WITNESS: For the most  
22 part, yes. I thumb through every  
23 page or read everything that's of  
24 interest to me.

Page 122

Page 124

1 BY MS. YU:  
 2 Q. Are there any other  
 3 periodicals that you read regularly  
 4 that are similar to the AARP  
 5 publication?  
 6 MR. MALONE: Object to the  
 7 form.  
 8 THE WITNESS: No.  
 9 BY MS. YU:  
 10 Q. Are there any other  
 11 newspapers that you read regularly?  
 12 MR. MALONE: Object to the  
 13 form.  
 14 THE WITNESS: Yes.  
 15 BY MS. YU:  
 16 Q. What papers do you read  
 17 regularly?  
 18 A. Local newspapers, area  
 19 newspapers.  
 20 Q. Any national news reports?  
 21 A. Occasionally, yes.  
 22 Q. Such as...?  
 23 A. Philadelphia Inquirer,  
 24 Atlantic City Press, U.S. News, that

1 some insight from HR.  
 2 Q. What is your understanding  
 3 of what the IBM litigation was about?  
 4 A. From what I read in the  
 5 articles, that it was a class action  
 6 spearheaded by a lady, I forget her  
 7 name, that in reaction or response to  
 8 what IBM in converting their old  
 9 retirement plan and new cash balance  
 10 plan that it affected many of the  
 11 older employees in the company  
 12 unfairly.  
 13 And that's why she took the  
 14 measures that she did was try to I  
 15 assume correct something that she  
 16 felt was wrong.  
 17 Q. What is your understanding  
 18 of the age discrimination claim that  
 19 was involved in the IBM case?  
 20 MR. MALONE: Object to the  
 21 form of the question.  
 22 THE WITNESS: The way that  
 23 I understood it in the article that  
 24 when a pension plan is converted for

Page 123

Page 125

1 kind of thing.  
 2 Q. Do you read the Wall Street  
 3 Journal?  
 4 A. Rarely.  
 5 Q. How about the New York  
 6 Times?  
 7 A. Very rarely.  
 8 Q. So of the local newspapers,  
 9 do you read them on a daily basis or  
 10 less regularly?  
 11 A. Fairly regularly.  
 12 Q. And for how long have you  
 13 been reading the local newspapers?  
 14 A. Years. Decades.  
 15 MR. MALONE: I think  
 16 decades would do the job.  
 17 BY MS. YU:  
 18 Q. What was your concern when  
 19 you wrote this e-mail?  
 20 A. This sort of was leading up  
 21 to my decision that I needed to do  
 22 something not only to help me but  
 23 help other employees, and my attempt  
 24 was to get some clarification and

1 older employees, it puts them at a  
 2 disadvantage in that they won't be  
 3 able to acquire the same retirement  
 4 benefits they would have gained from  
 5 their other plan.  
 6 So the age portion, the age  
 7 discrimination portion I believe was  
 8 because as being an older worker you  
 9 would not be able to attain the same  
 10 benefit through a cash balance plan  
 11 was because you just couldn't work  
 12 long enough to do that.  
 13 BY MS. YU:  
 14 Q. Do you feel like the claims  
 15 that were asserted in the IBM case  
 16 applies with respect to the Conectiv  
 17 cash balance plan?  
 18 MR. MALONE: Object to the  
 19 form of the question.  
 20 THE WITNESS: I see some  
 21 similarities. I can't say they're  
 22 identical, but they're both cash  
 23 balance plans. They both affected  
 24 older workers and that's where I see

Page 126

Page 128

1 the similarities.

2 BY MS. YU:

3 Q. Do you believe the Conectiv  
4 cash balance plan discriminates  
5 against older workers?

6 A. When you ask that question,  
7 you mean did they do that on purpose?

8 Q. Well, why don't you answer  
9 that question. Do you think that  
10 anyone at PHI, its subsidiary  
11 companies, its predecessors -- can we  
12 define what we're talking about here  
13 as the company?

14 MR. MALONE: I think what  
15 you want to talk about because of the  
16 timing is you want to talk about  
17 Conectiv. PHI was not in the picture  
18 at this time.

19 And if you're going to talk  
20 about intent, you're going to hear  
21 from me on the difference between  
22 general intent and specific intent.

23 So put those on the table  
24 for purposes of you starting to frame

1 versus general intent.

2 I think in that context the  
3 question is ambiguous, but you can go  
4 ahead and answer it.

5 THE WITNESS: I was not  
6 part of the decision-making on  
7 converting the conventional  
8 retirement plan into a cash balance.  
9 I don't know if the company knew 100  
10 percent whether it affected employees  
11 or not, or did they care, I don't  
12 know.

13 So not knowing that, I  
14 really have a difficult time in  
15 answering your question as to whether  
16 they did this as a means of affecting  
17 older employees, whether they did  
18 that purposely for that, I don't know  
19 that.

20 BY MS. YU:

21 Q. Your employers changed over  
22 time, ACE, then Conectiv, and now it  
23 seem to be ACE and PHI on some level.  
24 Would you answer that question

Page 127

Page 129

1 your question and then we'll go from  
2 there.

3 BY MS. YU:

4 Q. Do you believe that anyone  
5 at Conectiv acted intentionally to  
6 discriminate against older workers?

7 MR. MALONE: I'll object to  
8 the form of the question. What do  
9 you mean by the phrase  
10 "intentionally"?

11 MS. YU: I'm using that  
12 phrase because Mr. Charles started  
13 with it.

14 MR. MALONE: I understand  
15 that.

16 MS. YU: So I'm asking him  
17 to answer that question.

18 MR. MALONE: But there's  
19 intent in the sense of doing  
20 something to accomplish a purpose,  
21 and there's intent in the sense of  
22 doing something that has a  
23 consequence that's foreseeable where  
24 you intend to do the act. Specific

1 differently if it were asked with  
2 respect to all of your employers?

3 MR. MALONE: I'm going to  
4 have to object to the form of the  
5 question and also for lack of  
6 foundation, because this plan was  
7 rolled out at one particular time and  
8 then imposed upon.

9 THE WITNESS: Could you  
10 restate the question, clarify it?

11 BY MS. YU:

12 Q. Sure. What I want to cover  
13 is, regardless of the name of your  
14 employer for the entire period of  
15 time since 1980 or so that you've  
16 been working for ACE and its  
17 successors, have you ever felt as  
18 though there was anyone who was  
19 discriminating against you because of  
20 your age?

21 MR. MALONE: In any context  
22 at all?

23 MS. YU: In any context.

24 THE WITNESS: When it was

Page 130

Page 132

1 rolled out, I was a little confused  
2 at the point at which they said  
3 you're grandfathered, you're not, and  
4 why they picked a particular age.

5 I'm not -- I don't know, I  
6 can't say at that point did I feel  
7 like I was being discriminated  
8 against because of my age. Strictly  
9 I just felt it was rather odd that  
10 they point in the sand and said that  
11 was it. I think it was more  
12 confusion than it was anything else.  
13 BY MS. YU:

14 Q. Is there any other time or  
15 any other instance where you felt you  
16 were being discriminated against  
17 because of your age?

18 A. Moving forward in time,  
19 after hearing from coworkers the  
20 differences between the two pensions,  
21 I started to develop the thought  
22 that, whether it was done on purpose  
23 or accidental, a drawing of a line in  
24 the sand saying if you're this age,

1 plan --

2 MR. MALONE: Object to the  
3 form.

4 MS. YU: I'm not even done  
5 yet.

6 MR. MALONE: I'm just  
7 putting it on the table.

8 MS. YU: You succeeded.  
9 Now I've lost my train of thought.

10 MR. MALONE: My concern was  
11 that I think you're making a  
12 cognitive leap with respect to his  
13 testimony that is not supported by  
14 the record, and that's why I have the  
15 objection to the form of the question  
16 that you're going to ask.

17 MS. YU: Let's start over.

18 BY MS. YU:

19 Q. Do you feel like the cash  
20 balance plan is age discriminatory?

21 MR. MALONE: Object to the  
22 form. Go ahead and answer if you  
23 understand it.

24 THE WITNESS: Yes.

Page 131

Page 133

1 you're okay; if you're not that age,  
2 it's not okay, and knowing after  
3 doing some research and asking  
4 questions about the plan that a man  
5 49 years 8 months old missing the  
6 cutoff by a few months, that I did  
7 feel there was some sort of age  
8 discrimination in that.

9 Simply -- not so much that  
10 I felt they were targeting a specific  
11 age, again going back to the line in  
12 the sand wondering, well, why didn't  
13 you make it 30 years old, why didn't  
14 you make it 25 years old, why didn't  
15 you make it Y? Why 50? I didn't  
16 understand that, or 49, but that was  
17 the only feeling that I had at that  
18 time that something, you know, it was  
19 unfair for older people that were  
20 that close to be thrust into a cash  
21 balance plan.

22 Q. Just so I understand your  
23 position on what is age  
24 discriminatory about the cash balance

1 BY MS. YU:

2 Q. How is it age  
3 discriminatory?

4 A. As an older employee, in  
5 order for me to gain or acquire the  
6 same benefit under that in comparison  
7 to the other plan, I would have to  
8 work ten, 15 -- I don't know how many  
9 more years and may never attain the  
10 same amount.

11 Q. So is it a comparison of  
12 the benefit that you get under the  
13 cash balance plan with the benefit  
14 under the old plan formula that you  
15 think is age discriminatory?

16 A. I believe so, yes.

17 Q. In what other ways do you  
18 feel the cash balance plan is age  
19 discriminatory?

20 A. Only when older employees  
21 have no choice and must have that as  
22 the retirement plan do I see that as  
23 age discriminatory.

24 Q. So it's the fact that the

Page 134

Page 136

1 employer adopted the cash balance  
2 formulation of the plan and that  
3 older workers were required to be in  
4 that cash balance formula. Is that  
5 what you feel is age discriminatory?

6 MR. MALONE: Object to the  
7 form of the question as calling for a  
8 legal opinion from a lay witness.  
9 You can answer as to your  
10 understanding.

11 THE WITNESS: As best I  
12 understand the plan, it's my own  
13 experience, yes, I believe that the  
14 older you are put into the cash  
15 balance plan, the more of a  
16 disadvantage you're going to be at.

17 BY MS. YU:

18 Q. Who do you think is being  
19 harmed by the cash balance plan?

20 MR. MALONE: Object to the  
21 form of the question. Go ahead and  
22 answer.

23 THE WITNESS: Any  
24 non-grandfathered employee from the

1 I can answer that is knowing from my  
2 personal experience and other  
3 coworkers that the way that it was  
4 presented, the way that it's funded,  
5 the way that we were put into that  
6 plan, that it just didn't provide the  
7 same benefits and -- I lost my train  
8 of thought.

9 BY MS. YU:

10 Q. I just want to make sure I  
11 understand what you've been saying.

12 Is the harm that you feel  
13 you've suffered under the cash  
14 balance plan because you feel like  
15 your benefit under the cash balance  
16 plan is not as great as the benefit  
17 you would have received under the old  
18 plan?

19 A. Yes.

20 Q. Is there any other way that  
21 you feel like you've been harmed  
22 because of the cash balance plan?

23 A. Harmed in what way?  
24 Financially?

Page 135

Page 137

1 age of 30 up to the cutoff date.

2 BY MS. YU:

3 Q. In that group of people, do  
4 you think that some are harmed more  
5 than others?

6 MR. MALONE: Object to the  
7 form.

8 THE WITNESS: Yes. If  
9 you're going strictly by their age, a  
10 person can only live so long, and  
11 obviously the older you are that  
12 you're placed into a cash balance  
13 plan the longer you have to stay in  
14 that plan to achieve the same  
15 retirement benefit as the prior man.

16 BY MS. YU:

17 Q. Are there any other reasons  
18 why you think that the cash balance  
19 plan is age discriminatory?

20 MR. MALONE: Object insofar  
21 as it calls for a legal opinion from  
22 a lay witness. Answer as to your  
23 understanding.

24 THE WITNESS: The only way

1 Q. Are there any other ways  
2 that you could have been harmed by  
3 the cash balance plan?

4 MR. MALONE: Object to the  
5 form of the question.

6 THE WITNESS: Perhaps some  
7 emotional distress in that now  
8 knowing that I may have to work until  
9 I'm 70, I don't know.

10 BY MS. YU:

11 Q. Has the adoption of the  
12 cash balance plan caused you  
13 emotional distress?

14 A. Now knowing or realizing  
15 the last couple of years that I can't  
16 retire now because there's  
17 insufficient funds in it for me to  
18 retire. Yes, that is -- it's not  
19 making me want to jump out the  
20 window, but just makes me know that I  
21 can't retire.

22 Q. In terms of the damages  
23 that you're seeking to recover  
24 through this lawsuit --

Page 138

Page 140

1 MR. MALONE: Objection to  
2 the form of the question as calling  
3 for a legal conclusion from a lay  
4 witness. You can answer as to your  
5 understanding.

6 BY MS. YU:

7 Q. As to the damages that  
8 you're seeking to recover through  
9 this litigation, is there anything  
10 other than your benefits are less  
11 under the cash balance plan formula  
12 than you feel they would have been  
13 under the old plan, is there anything  
14 else that you're seeking to recover  
15 in this litigation?

16 MR. MALONE: Same  
17 objection.

18 THE WITNESS: The only way  
19 I can answer that is if they had  
20 never instituted the cash balance  
21 plan, if the old plan still exists, I  
22 would not be here today. I don't  
23 know if that answers your question.  
24 BY MS. YU:

1 BY MS. YU:

2 Q. Yes.

3 A. I haven't given thought for  
4 that. My primary focus has been  
5 strictly on trying to right a wrong,  
6 help other employees that are in my  
7 situation. I myself aren't looking  
8 for any huge personal gain out of  
9 this. But for now, all I want to do  
10 is just correct this wrongdoing.

11 Q. Tell me what you think the  
12 wrongdoing is.

13 MR. MALONE: Object to the  
14 form of the question. It calls for a  
15 legal opinion from a lay witness.  
16 You should answer to your  
17 understanding.

18 THE WITNESS: If you were  
19 to take a poll of the employees of  
20 the utility that I work for, The  
21 Heritage Company, you would find out  
22 that 100 percent of those individuals  
23 came to work for that company because  
24 they knew it was secure, had a good

Page 139

Page 141

1 Q. What is the recovery that  
2 you are seeking from the defendants  
3 in this litigation?

4 MR. MALONE: Object to the  
5 form of the question. Calling for  
6 legal opinion from a lay witness.  
7 You can testify as to your  
8 understanding.

9 THE WITNESS: Fair. I'm  
10 not looking to bankrupt the company,  
11 punish anyone, see anyone get fired.  
12 I'm just trying to correct a wrong.

13 BY MS. YU:

14 Q. How in your view should it  
15 be corrected?

16 A. Honestly?

17 Q. Yes.

18 A. Put it back the way it was.

19 Q. Is there anything else  
20 you're looking for?

21 MR. MALONE: Object to the  
22 form of the question.

23 THE WITNESS: In  
24 compensation?

1 retirement plan, and knew that they  
2 could work 25, 30 years, and at that  
3 end be able to retire with a nice,  
4 full retirement.

5 That's how I would answer  
6 that question. I don't know what  
7 else you want me to -- you're  
8 searching for.

9 BY MS. YU:

10 Q. What did the company do  
11 that was wrong?

12 A. They -- they took something  
13 that was -- had been in existence for  
14 years, decades, and said, We don't  
15 care how long you've been here, we're  
16 changing the rules, and we're going  
17 to say that this is now the  
18 retirement plan, and for those folks  
19 not grandfathered, like it or not,  
20 this is it.

21 I would assume if they  
22 said, Here's a new retirement plan;  
23 here's an old retirement plan;  
24 everybody, take your pick, I would



Page 142

Page 144

1 say that would be fair.

2 Q. Is there anything else that  
3 the company did that's part of the  
4 wrongdoing that you've been talking  
5 about?

6 A. Not as it pertains to  
7 strictly the cash balance plan.

8 Q. Is there anything else the  
9 company has done wrong that does not  
10 pertain to the cash balance plan?

11 MR. MALONE: Object to the  
12 form of the question. The company,  
13 who do you mean by the company in  
14 this instance?

15 MS. YU: Well, his  
16 employer.

17 MR. MALONE: Okay.

18 THE WITNESS: I'm sure  
19 there are other injustices that were  
20 done to other people that had nothing  
21 to do with this plan that I don't  
22 know about.

23 I know during the mergers,  
24 plural, that numerous people lost

1 MR. MALONE: Object to the  
2 form of the question insofar as it  
3 calls for a legal opinion from a lay  
4 witness. Also, object to the use of  
5 the word "adopting it" which I think  
6 is ambiguous given the context of the  
7 record.

8 BY MS. YU:

9 Q. Whatever word you want to  
10 use to convey the fact that there was  
11 a change from the old plan to  
12 implement the new cash balance plan.  
13 Whatever terminology you want to use  
14 is fine with me.

15 MR. MALONE: That's fine.

16 THE WITNESS: No. The only  
17 objection that I have is the placing  
18 of those people into the cash balance  
19 plan with no other choices.

20 (Exhibit D-16 was marked  
21 for identification.)

22 BY MS. YU:

23 Q. Exhibit D-16.

24 A. I'm sorry?

Page 143

Page 145

1 their jobs for whatever reason. Was  
2 that right or was that wrong? It's  
3 not my company, but certainly for any  
4 person to have to deal with that  
5 certainly is not a good thing.

6 So if you were to ask that  
7 individual, I'm sure they would say  
8 they've been wronged. I've been very  
9 fortunate. I have always had my job,  
10 so I can't speak about other things.

11 BY MS. YU:

12 Q. I'm just thinking about  
13 your answer, and I just want to  
14 circle back, to bring it back to the  
15 cash balance plan.

16 Is there anything other  
17 than the adoption of the cash balance  
18 plan that there was this change from  
19 the old plan to this new cash balance  
20 formula, is there anything else that  
21 you feel the company did that was  
22 part of the wrongdoing with respect  
23 to the cash balance plan other than  
24 adopting it?

1 Q. Exhibit D-16 is an e-mail  
2 trail. Do you recognize these  
3 messages?

4 A. Yes. If I go back to the  
5 beginning, I guess that's --

6 MR. MALONE: Let the record  
7 reflect that the witness has turned  
8 to the last page of what is Exhibit  
9 D-16 and what would be the  
10 penultimate page of D-16.

11 BY MS. YU:

12 Q. And that is on JMC 462, an  
13 e-mail from you that is dated  
14 10/24 -- is that 2006?

15 A. Yes. '06. Sure can't be  
16 '08.

17 Q. Not quite yet.

18 Did you send this message  
19 to HR?

20 A. Yes.

21 Q. What prompted you to send  
22 this message?

23 A. Couple of things. First, I  
24 like having a backup to a backup, and

Page 146

Page 148

1 no offense to my legal firm, hope  
2 this never happens, but a meteor can  
3 hit him on the head right in the law  
4 firm.

5 So me being the kind of  
6 person that likes to have a backup to  
7 a backup thought I would look into  
8 seeing what opportunities there were  
9 should I go back into the union,  
10 which I think I stated before I was  
11 previously.

12 So I posed this question to  
13 HR, if I go back, what happens.  
14 That's basically what the question  
15 was.

16 Q. Have you gone back to the  
17 union?

18 A. No.

19 Q. Did you have a job offer?

20 A. To go into the union is a  
21 bidding process. It's a posting, you  
22 apply for it, if no one else gets it  
23 it's yours.

24 Q. Did you go through a

1 the cash balance plan, though?

2 A. Well, it would freeze. If  
3 I were to go back, whatever was in  
4 there would freeze, whatever value it  
5 is.

6 Q. Which accounted for the 27  
7 years of service?

8 A. Not really.

9 Q. Oh, how not?

10 A. Because the cash balance  
11 plan was instituted in 1999, not  
12 1979.

13 Q. So how do you think it  
14 should have worked?

15 MR. MALONE: Object to the  
16 form of the question.

17 THE WITNESS: I didn't  
18 know. That's why I asked.

19 MR. MALONE: I think the  
20 what needed an antecedent in that  
21 question, and I think you've asked  
22 one question and you've answered  
23 another, but I'm going to shut up and  
24 let the lawyer do the job.

Page 147

Page 149

1 bidding process for a job?

2 A. No.

3 MR. MALONE: No offense  
4 taken, for the record.

5 BY MS. YU:

6 Q. Are there any union jobs  
7 you're interested in right now?

8 A. No.

9 Q. So what was the answer that  
10 you got?

11 A. The answer would be -- is  
12 that if you go back into the union,  
13 you will go back in as a new  
14 employee. So my 27 years of  
15 seniority and service went to zero.

16 The cash balance plan would  
17 freeze at that point, no other  
18 contributions other than whatever  
19 interest it gained would be in there,  
20 and I would fall as a new employee  
21 under the old retirement plan, but  
22 starting as day one. So from zero.

23 Q. And you would get credit  
24 for your 27 years of service under

1 BY MS. YU:

2 Q. When you asked the  
3 question, did you have something in  
4 mind in terms of how the crediting of  
5 service should work if you went back  
6 to the union?

7 A. No. Again, that's why I  
8 asked the question.

9 (Exhibit D-17 was marked  
10 for identification.)

11 BY MS. YU:

12 Q. Exhibit D-17 is a series of  
13 documents that we received from your  
14 attorney. The first page has what's  
15 called your opening cash balance on  
16 it. We'll talk about the subsequent  
17 pages in a moment.

18 Do you recognize this  
19 document, the first page of Exhibit  
20 D-17?

21 A. Not the first page, no.

22 Q. Did you provide this  
23 document to your attorney?

24 A. I supplied all the

Page 150

Page 152

1 subsequent pages to my attorney. I'm  
2 not sure where this first page comes  
3 from, but I'm pretty sure I may have  
4 seen it prior to today. I just don't  
5 remember.

6 Q. There is a figure under  
7 Your Opening Cash Balance.

8 MR. MALONE: This is a  
9 section we're going to want to  
10 designate as confidential, but given  
11 that you might as well just go ahead  
12 and use the number.

13 MS. YU: We'll go ahead and  
14 designate it confidential.

15 MR. MALONE: That's fine.  
16 BY MS. YU:

17 Q. \$138,172.25. Is that your  
18 understanding of what your opening  
19 cash balance account was on January  
20 1st, 1999?

21 A. I didn't have my first  
22 notification what that was. I had  
23 all the other ones. I'm not sure --  
24 I assume that's correct. I didn't

1 A. Yes.

2 Q. And the amount of credited  
3 service is 19.3095 years. Does that  
4 include all the service that you  
5 accrued between September 10th, 1979,  
6 and December 31st, 1998?

7 A. Yes.

8 Q. And according to the  
9 information on this statement, it was  
10 that number of credited years of  
11 service that was used in calculating  
12 the opening balance?

13 MR. MALONE: Object as to  
14 form and foundation.

15 THE WITNESS: I assume so.  
16 BY MS. YU:

17 Q. And assuming that it did,  
18 then it took account all of the years  
19 of service that you had with your  
20 employer to that period of time; is  
21 that right?

22 A. Yes.

23 Q. If you look at the second  
24 two pages -- second and third pages

Page 151

Page 153

1 have -- like I said, I didn't have  
2 all of these.

3 Q. Do you have any reason to  
4 believe it's not correct?

5 A. I'm sorry?

6 Q. Do you have any reason to  
7 believe that that opening cash  
8 balance is not correct?

9 A. No.

10 Q. If you look at the  
11 information that is on the first page  
12 of D-17, it has your Social Security  
13 number. Well, actually, could you  
14 confirm that that's your Social  
15 Security number?

16 A. Yes, it is.

17 Q. Is that your correct date  
18 of birth?

19 A. Yes.

20 Q. And the original hire date,  
21 it says September 10, 1979.

22 A. Yes.

23 Q. Is that the date that you  
24 were hired by ACE?

1 of D-17.

2 MR. MALONE: JMC number 9  
3 and number 10.

4 MS. YU: Yes.

5 MR. MALONE: Let the record  
6 reflect that the witness has turned  
7 to the designated pages of D-17.

8 BY MS. YU:

9 Q. Do you recognize these two  
10 pages?

11 A. Yes.

12 Q. When did you receive this  
13 statement? It looks like a statement  
14 that you would receive.

15 A. Yes. Yes. This went to my  
16 home. That would be sometime around  
17 the beginning of the year.

18 Q. And the date on this  
19 particular statement is for the  
20 calendar year 2002?

21 A. Yes.

22 Q. And it indicates what the  
23 opening balance was for that year; is  
24 that right?

Page 154

Page 156

1 A. Yes.  
 2 Q. So it gives an opening  
 3 balance and an ending balance for  
 4 that calendar year; is that correct?  
 5 A. Yes.  
 6 Q. The same information is  
 7 contained in the statements for  
 8 calendar years 2003 and 2004. 2003  
 9 is JMC 11 and 12 and then 2004 is JMC  
 10 13 and 14. The statement for  
 11 calendar year 2005 is included in JMC  
 12 15 and 16. Is that right?  
 13 A. Yes.  
 14 Q. If you compare the  
 15 balances, is there ever a time that  
 16 the balance declines from year to  
 17 year? Did it ever go down?  
 18 A. You're referring to the  
 19 ending balance on each statement?  
 20 Q. Look at the ending balance  
 21 of each statement.  
 22 A. No.  
 23 Q. So each year the ending  
 24 balance increased?

1 doubt the accuracy of these  
 2 calculations?  
 3 A. I have no way of proving  
 4 them to be anything other than  
 5 accurate.  
 6 Q. Do you believe they're  
 7 accurate?  
 8 A. I have to assume so. I  
 9 don't have -- I don't do the  
 10 computations. I don't keep -- I get  
 11 a statement and that's what it says  
 12 it's on there, so I have to assume  
 13 Vanguard is smart enough not to make  
 14 a mistake.  
 15 Q. Understanding that you have  
 16 to rely on others to do the actual  
 17 calculations for you, based on the  
 18 information that's contained  
 19 regarding your date of birth and your  
 20 date of hire, all those things that  
 21 are contained in these pages from JMC  
 22 17 to 19, is there anything that  
 23 leads you to question the accuracy of  
 24 the information that's provided

Page 155

Page 157

1 A. Some amount, yes.  
 2 Q. Take a look at JMC 17  
 3 through 19. Do you recognize these  
 4 pages?  
 5 A. Looks like a statement,  
 6 estimate of retirement benefits for a  
 7 specific retirement date.  
 8 Q. Do you recall receiving  
 9 this?  
 10 A. I may have, yes.  
 11 Q. Did you request that these  
 12 calculations be done?  
 13 A. Since this has the Vanguard  
 14 logo on it, I would assume it was  
 15 something that I requested perhaps,  
 16 but they may have sent it to me  
 17 without my request. I couldn't  
 18 remember.  
 19 Q. The date on these pages is  
 20 November 30th, 2004. Again, it's JMC  
 21 17 through 19. There are estimates  
 22 of benefit amounts on JMC 18 in  
 23 various forms.  
 24 Do you have any reason to

1 here?  
 2 A. Having no other way or any  
 3 other thing to compare it to, I have  
 4 to accept it for the way it is.  
 5 Q. Your date of birth and  
 6 termination date are accurate here;  
 7 correct?  
 8 MR. MALONE: "Here" being  
 9 on JMC 17?  
 10 MS. YU: 17.  
 11 MR. MALONE: I'm going to  
 12 object to the form of the question.  
 13 MS. HOFFMAN: It's actually  
 14 a proposed termination date since  
 15 it's a request.  
 16 MS. YU: I said date of  
 17 birth and date of hire. That's what  
 18 I meant to say.  
 19 MR. MALONE: Oh, I'm sorry.  
 20 I thought you said termination date.  
 21 THE WITNESS: I think I'm  
 22 still alive.  
 23 MR. MALONE: Well, you're  
 24 still working, too.

1 THE WITNESS: I'm still  
2 working, too.

3 RECESS

4 BY MS. YU:

5 Q. Back on the record. Mr.  
6 Charles, just finally to clarify,  
7 take a look at JMC 17, which is part  
8 of Exhibit D-17. Is your date of  
9 birth and date of hire accurate on  
10 that statement?

11 A. Yes.

12 Q. Now, the termination date,  
13 you did not terminate your employment  
14 on November 30, 2004, did you?

15 A. No.

16 Q. Were they taking that as an  
17 assumption to calculate and estimate  
18 what your retirement benefits were?

19 MR. MALONE: Objection.  
20 Lack of foundation.

21 THE WITNESS: When you ask  
22 for a statement, one of the things  
23 they ask you for is when do you think  
24 you'll go. So here's the number,

1 MS. YU: I'm sorry. Thank  
2 you.

3 BY MS. YU:

4 Q. What do you understand that  
5 number to be?

6 A. I'm assuming they're making  
7 a projection at this point that at  
8 the normal retirement date, whatever  
9 that date is, they're making an  
10 estimate as that what you would  
11 receive based on what's here now.

12 Q. Do you know what normal  
13 retirement is under the cash balance  
14 plan?

15 A. You can retire early at 55.  
16 You have -- you need five years to  
17 become vested in the plan first of  
18 all. Okay. After the five years you  
19 can take the plan with you, it's  
20 transferable, and all that sort of  
21 stuff. Retirement age I believe is  
22 65. However, you can retire early at  
23 55.

24 Q. So it's your understanding

1 here's the date, and that was the  
2 date that was presented.

3 BY MS. YU:

4 Q. And that date is an  
5 estimated retirement date?

6 A. It was just a date that was  
7 selected out of the air. Like I  
8 said, if you -- and I assume I did  
9 this; I don't really remember. But  
10 in order for them to give you a  
11 projection, not only do they need the  
12 start date, but you need the stop  
13 date, and so you give them the stop  
14 date and that was the date I  
15 selected.

16 Q. If we go back to the first  
17 page of D-17, it indicates in the  
18 middle of the page in the last  
19 figure, it says, The monthly accrued  
20 benefit as of 12/31/98 payable at  
21 normal retirement age.

22 MR. MALONE: I object to  
23 the form, payable at normal  
24 retirement.

1 of a normal retirement age at 65?

2 A. As described under both  
3 plans, yes.

4 Q. And at least in the  
5 document that shows the opening  
6 account balance on January 1st, 1999,  
7 again, the first page of D-17, the  
8 monthly accrued benefit is \$1,438.53.

9 A. What page are you on?

10 Q. I'm sorry. The very first  
11 page.

12 MR. MALONE: Direct your  
13 attention to the first page of D-17.  
14 There's a figure reflected for  
15 monthly accrued benefit as of  
16 12/31/1998. Do you see that?

17 THE WITNESS: Yes. The  
18 1,438.53, is that number you're  
19 referring to?

20 BY MS. YU:

21 Q. Yes.

22 A. You want me to compare it  
23 to what?

24 Q. I just wanted to make sure

Page 162

Page 164

1 that -- is there any reason for you  
2 to question that this was accurate at  
3 the time that it was calculated as of  
4 12/31/98?

5 A. I have no way of knowing  
6 whether it's right or wrong. All I  
7 know is this is what was presented to  
8 me. I don't have any access to the  
9 accounting within Vanguard or the  
10 Conectiv plan. So what's provided to  
11 me I have to assume is correct.

12 Q. And do you assume that  
13 that's correct?

14 A. Since it's on the page, I  
15 have to, yes.

16 Q. If we could go back to  
17 Exhibit D-16.

18 MR. MALONE: We can do  
19 that.

20 THE WITNESS: Can you put  
21 this up there far out of my spill  
22 range.

23 BY MS. YU:

24 Q. On the first page of

1 formula, is it your understanding  
2 that that would give you at least an  
3 estimate of what your benefit would  
4 have been under the old plan, the  
5 annuity benefit would be?

6 A. An estimate?

7 Q. Yes.

8 A. I would assume it would  
9 give some sort of an idea.

10 Q. What is your current  
11 salary?

12 MR. MALONE: Subject to the  
13 confidential designation?

14 MS. YU: Yes.

15 THE WITNESS: At the end of  
16 '06 I think my last statement was and  
17 don't -- I think it was \$86,000.

18 Can I add to that?

19 BY MS. YU:

20 Q. Certainly.

21 A. That is not my base salary.  
22 That's with bonus and selling back a  
23 couple weeks of vacation.

24 Q. Is it your understanding

Page 163

Page 165

1 Exhibit D-16, in the top paragraph  
2 there's a formula that they give you.  
3 What is your understanding of what  
4 this formula is?

5 A. This is a formula that was  
6 utilized under the old plan to  
7 determine what your lump sum  
8 retirement benefit would be.

9 MR. MALONE: Can we have  
10 the question and the answer read  
11 back, because I think the witness may  
12 have misspoken.

13 MS. YU: You know, instead  
14 of doing that, why don't we -- I'll  
15 do it a different way.

16 BY MS. YU:

17 Q. The e-mail says, You could  
18 multiply 1.6 percent of your average  
19 salary, highest five out of last ten  
20 years of service, multiply by your  
21 years of service under the ACE sub  
22 plan. That would give you your  
23 monthly annuity amount.

24 So referring to that

1 that the entire amount of your  
2 salary, the approximately \$86,000,  
3 would be taken into account in  
4 calculating your retirement under the  
5 old plan?

6 A. Under the old plan.

7 Q. Under the old plan.

8 A. Yes.

9 Q. That is your understanding?

10 A. Yes.

11 Q. In the e-mail it says

12 highest five out of the last ten  
13 years of service. Would 86,000 be at  
14 the higher end of your compensation  
15 over the last ten years?

16 A. There might have been one  
17 prior year it was higher than that.  
18 I'm not sure what year that would  
19 have been. Two years ago, three  
20 years ago when the company did very  
21 well and the bonus that was provided  
22 was substantially higher.

23 Q. Would 86,000 be a pretty  
24 good estimate of the average?



Page 166

Page 168

1 MR. MALONE: Object to the  
2 form. Average over what time?  
3 MS. YU: Average for the  
4 highest five out of the last ten  
5 years.  
6 THE WITNESS: That would be  
7 a guess on my part. I don't  
8 really -- I don't remember each  
9 year's salary. I only remember last  
10 year because I just saw the last  
11 paycheck, and I do remember that  
12 there was one year that I did well  
13 compensation-wise because the company  
14 did well that year.  
15 It was -- is 86,000 an  
16 average? I don't -- I can't say yes  
17 or no. I don't know.  
18 BY MS. YU:  
19 Q. But with this formula, you  
20 could calculate what your monthly  
21 annuity would have been under the old  
22 plan; correct?  
23 MR. MALONE: Objection to  
24 the form of the question.

1 calculate currently what you would be  
2 getting in your present position.  
3 I think she's referring to  
4 if I go back in the union and if I  
5 want to know what it would be, that's  
6 what I would use.  
7 (Exhibit D-18 was marked  
8 for identification.)  
9 BY MS. YU:  
10 Q. Mr. Charles, do you  
11 recognize the documents that have  
12 been marked as Exhibit D-18?  
13 A. Yes.  
14 Q. Could you explain to me  
15 what Exhibit D-18 is.  
16 A. Sure. The first page lists  
17 all the estimates that was done to  
18 forecast what I would receive as a  
19 pension annuity lump sum with a  
20 specific retirement date that I would  
21 request.  
22 They're numbered -- I guess  
23 they're in order? Yes. The first --  
24 and there was a period of time when

Page 167

Page 169

1 THE WITNESS: I could use  
2 it to get a rough estimate, I  
3 suppose.  
4 BY MS. YU:  
5 Q. Did you do that after you  
6 received this e-mail?  
7 A. I didn't think it was  
8 necessary at that point. That wasn't  
9 really what I was -- the primary  
10 question that I was asking. I don't  
11 think that was...  
12 Q. What was your primary  
13 question?  
14 A. My primary question was  
15 what would -- and that was what I  
16 directed to the HR department, if I  
17 go back as a union representative,  
18 what would I see?  
19 I think she's trying to ask  
20 me if you go back into the union,  
21 this is how you would calculate that,  
22 going back into the union. I don't  
23 think she's stating in here -- she  
24 stated in here this is how you

1 the only way you could get an  
2 estimate like this would be to call  
3 Vanguard directly and request it.  
4 Then they updated their  
5 website, made some improvements where  
6 you could go in and do it yourself,  
7 and some of these other ones were  
8 done by phone. You can see from the  
9 way --  
10 MR. MALONE: Let the record  
11 reflect the witness is indicating the  
12 first page of what's been marked as  
13 Exhibit D-18.  
14 BY MS. YU:  
15 Q. Which is JMC 467.  
16 So on each of the dates  
17 that are listed on the first page of  
18 D-18, are those dates upon which you  
19 requested an estimate?  
20 A. Yes. Either I did it or it  
21 was done over the phone.  
22 Q. Are those estimates  
23 attached to the first page?  
24 A. I have not looked at every

Page 170

Page 172

1 one, but I assume that's what they  
2 are.  
3 MR. MALONE: There were six  
4 estimates as to which we claim the  
5 work product protection for which you  
6 have the list and which you don't  
7 have the estimate.

8 They are between May 20 and  
9 July 18 when he was asked to prepare  
10 estimates at my direction. Other  
11 than that, I believe the package of  
12 estimates is complete.

13 MS. HOFFMAN: Our silence  
14 doesn't mean our consent.

15 MR. MALONE: I'm not  
16 interpreting that in any way, shape,  
17 or form.

18 BY MS. YU:

19 Q. Mr. Charles, if you could  
20 look at the pages JMC 472 and 473 of  
21 D-18.

22 Actually, I'm sorry,  
23 they're not the pages I wanted you to  
24 look at. They are JMC 478 and 479.

1 A. That's the date I created  
2 it.

3 Q. That it was created?

4 A. It was created.

5 Q. The pension start date I  
6 believe is on page JMC 469 listed as  
7 11/1/2014; is that right?

8 A. Start date?

9 Q. The pension payment start  
10 date.

11 A. Well, yeah. That would be  
12 the date that I said that's when I  
13 want to start taking my pension  
14 payments, yes.

15 Q. What age would you be on  
16 November 1st, 2014?

17 A. Hopefully I'm still alive.  
18 I would assume I would be 64. No.  
19 65. 65.

20 Q. And age 65 is the normal  
21 retirement age under the cash balance  
22 plan; is that right?

23 A. I believe so, yes.

24 Q. So these annuity amounts

Page 171

Page 173

1 Can you tell on what date  
2 you requested this pension estimate?

3 MR. MALONE: From examining  
4 these two pages or from examining the  
5 document as a whole?

6 MS. YU: From examining the  
7 document as a whole.

8 THE WITNESS: Yes. There's  
9 an ID number at the top,  
10 corresponding title page, and the  
11 date it was created.

12 MR. MALONE: Referencing  
13 the columns on the first page.

14 THE WITNESS: Thank you.  
15 BY MS. YU:

16 Q. So am I correct that the  
17 estimate on JMC 478 that starts on  
18 that page, the number is 17054889,  
19 and then if we look for that ID on  
20 the first page of D-18 it corresponds  
21 with estimate number 17?

22 A. Yes.

23 Q. Which looks like was  
24 requested on April 26 of 2006?

1 show what your monthly benefit in the  
2 form of an annuity would be at normal  
3 retirement age?

4 MR. MALONE: As reflected  
5 on JMC 00478?

6 MS. YU: Yes.

7 THE WITNESS: From this  
8 projection, yes.

9 BY MS. YU:

10 Q. Do you recall when the  
11 first time was that you asked for a  
12 pension estimate?

13 A. I believe it would be 2004.  
14 Spring.

15 Q. So the list of estimates  
16 that appears on the first page of  
17 D-18 is not a complete list of all  
18 the requests that you've made?

19 MR. MALONE: Object to the  
20 form of the question, use of the word  
21 complete.

22 THE WITNESS: There may  
23 have been other ones. I don't know  
24 if there are. I know that in 2004 is

Page 174

Page 176

1 when I started looking to see and  
2 gathering more information on pension  
3 payout with the cash balance plan.

4 I would assume that from  
5 these dates these were all that  
6 either I requested by phone or via  
7 the web and there are no other ones.  
8 I'm not sure when I said spring of  
9 '04 whether that was correct or not.  
10 BY MS. YU:

11 Q. So there may have been  
12 other estimates that you requested or  
13 submitted for, but you're not certain  
14 whether they're all reflected on this  
15 list or not?

16 A. I have to assume that  
17 everything I asked for is reflected  
18 here. But, again, when they  
19 instituted the web access, I don't  
20 know if prior to that there were  
21 other estimates provided that would  
22 not show up on here. So everything  
23 that I have I presented to my  
24 attorney.

1 transition credits?

2 MR. MALONE: Object to the  
3 form of the question.

4 THE WITNESS: I believe I  
5 was provided some amount of  
6 transition credits when I moved from  
7 the old retirement plan to this plan.  
8 BY MS. YU:

9 Q. Do you have an  
10 understanding of why you received  
11 those transition credits?

12 A. I'm sorry. I could not  
13 hear you.

14 Q. Do you have an  
15 understanding of why you received  
16 those transition credits?

17 A. I know there was a formula  
18 that was developed to produce a  
19 starting point forecast balance. I  
20 don't know how the formula was  
21 created or who created it or how it  
22 got put together. That's basically  
23 all I know about that.

24 Q. What's your understanding

Page 175

Page 177

1 Q. Okay.  
2 (Exhibit D-19 was marked  
3 for identification.)

4 BY MS. YU:

5 Q. Mr. Charles, do you  
6 recognize the document that's been  
7 marked as D-19?

8 A. Yes. I believe this is the  
9 description of a cash balance sub  
10 plan in connection with the  
11 retirement plan.

12 Q. How did you obtain this  
13 document?

14 A. It can be acquired through  
15 the intranet, the company's internal  
16 website.

17 Q. Is that in fact how you  
18 obtained this copy?

19 A. I believe that's how I got  
20 it, yes.

21 Q. There's a reference on the  
22 second page of Exhibit 19 on JMC 78  
23 that refers to transition credits.

24 Do you know whether you received any

1 of pay credits under the cash balance  
2 plan?

3 A. Pay credits would be each  
4 year in addition to the interest that  
5 a cash balance requires there's some  
6 pay credits that are put into that  
7 based on salary.

8 Q. Do you know whether the pay  
9 credits, the percentage of pay  
10 credits, is determined by age?

11 A. As far as I know it's based  
12 on your salary.

13 Q. Take a look at the second  
14 page of D-19, and there's a part  
15 that's really the bottom half of the  
16 page and it says Participant's Age  
17 and Pay Credit Rate.

18 A. Uh-huh.

19 Q. It says Under 30 it's five  
20 percent; 30 to 34, six percent; 35 to  
21 39, seven percent; 40 to 44 is eight  
22 percent; 45 to 49 is nine percent,  
23 and it says 50 and over is ten  
24 percent.

Page 178

Page 180

1 Is it your understanding  
2 that what percentage pay credit that  
3 you get is dependent on what your age  
4 is and where you fall in this  
5 bracket?

6 A. Yes.

7 Q. So what is the percentage  
8 of pay credit that you're receiving  
9 now?

10 A. I would be ten percent.

11 Q. And then ten percent of  
12 your salary; is that correct?

13 A. That's the way it's  
14 outlined, yes.

15 Q. And is it your  
16 understanding that you've received  
17 pay credits in accordance with this  
18 table of percentages since the  
19 inception of the cash balance plan?

20 A. From the information that  
21 I've received, going back to the  
22 other documents, it does indicate  
23 there was a payment for that. I  
24 assume that that's correct.

1 THE WITNESS: From whom?

2 BY MS. YU:

3 Q. From anybody regarding the  
4 cash balance plan.

5 A. I've asked other employees  
6 if they had any handouts, brochures,  
7 information as it pertained to the  
8 cash balance conversion, yes.

9 Q. Have you ever made a  
10 request to the plan administrator for  
11 a plan document pertaining to the  
12 cash balance plan?

13 MR. MALONE: Object to the  
14 form of the question.

15 THE WITNESS: Since I was  
16 able to acquire this through the  
17 intranet, I had no need to make a  
18 formal request to HR, whomever there.

19 BY MS. YU:

20 Q. From whom have you received  
21 plan documents?

22 A. When you're referring to  
23 the plan documents, are you referring  
24 to this document and the other --

Page 179

Page 181

1 Q. Have you read the Summary  
2 Plan Description?

3 A. I'm sorry. What is it?

4 Q. Have you read this Summary  
5 Plan Description?

6 A. I've read through it. I'm  
7 not completely versed on it, but I  
8 have read through it.

9 Q. Do you have any reason to  
10 believe that it does not accurately  
11 reflect the terms of the cash balance  
12 plan?

13 MR. MALONE: Objection.  
14 Lack of foundation.

15 THE WITNESS: Not being  
16 versed in documents like this, I  
17 assume that it is written  
18 appropriately for a cash balance  
19 plan, but I am not an expert.

20 BY MS. YU:

21 Q. Have you ever requested  
22 copies of plan documents?

23 MR. MALONE: Object to the  
24 form.

1 MR. MALONE: Indicating for  
2 the record Exhibit D-19.

3 BY MS. YU:

4 Q. This is a Summary Plan  
5 Description, which is considered a  
6 plan document. There are other types  
7 of plan documents, and I'm asking you  
8 that question really in reaction to  
9 your answer where you said that you  
10 had asked for plan documents from  
11 other employees.

12 A. The question I asked other  
13 employees was not specifically do you  
14 have plan documents. The question I  
15 asked coworkers is do you have any  
16 information on the cash balance plan.  
17 Never specifically did I ask for a  
18 plan document.

19 Q. Did you receive any plan  
20 documents from your coworkers or  
21 whoever you asked that question of?

22 A. I may have, but, again, all  
23 the documentation I received from  
24 coworkers I did not identify, tag,

Page 182

Page 184

1 label in any way. So their  
2 information just got mixed in with  
3 what I had, what I acquired off the  
4 Internet, or what I got from AARP all  
5 lumped together.

6 Q. I don't think we ever  
7 finished the conversation about the  
8 categories of people that you talked  
9 to about the cash balance plan.

10 You described conversations  
11 that you had with coworkers, and then  
12 we also talked about conversations  
13 you had with family and friends.

14 I want to make sure I cover  
15 the conversations that you had with  
16 people in HR or any questions that  
17 you had about the cash balance plan  
18 that you directed, really, toward  
19 your employer.

20 In that category of types  
21 of conversations, we looked at a  
22 couple e-mails that you sent. Are  
23 there other communications, whether  
24 by e-mail or verbally, that you had,

1 established that he had a telephone  
2 conversation.

3 THE WITNESS: I would have  
4 to assume that all my inquiries that  
5 I had made verbally, over the phone,  
6 to people in HR, had something to do  
7 with either the old sub plan or the  
8 cash balance plan. I don't know any  
9 other reason why I would be asking  
10 questions.

11 BY MS. YU:

12 Q. Other than the  
13 conversations that we've talked about  
14 already, are there any other  
15 categories of people that you've had  
16 conversations with about the cash  
17 balance plan?

18 MR. MALONE: I'm going to  
19 object to the form. Basically my  
20 concern is we covered this in the  
21 morning, and now it's several hours  
22 later and I'm not sure that any of us  
23 remember what he's covered. That's  
24 my concern. But you can answer the

Page 183

Page 185

1 or in writing, with other people at  
2 HR or who were administering the  
3 plan?

4 MR. MALONE: Object to the  
5 form of the question. Go ahead and  
6 answer.

7 THE WITNESS: I may have  
8 had some verbal conversations with  
9 people at HR prior to these e-mails.

10 MR. MALONE: Verbal meaning  
11 oral?

12 THE WITNESS: Telephone  
13 call. Not face to face. I don't  
14 even remember whom I may have spoke  
15 to around the cash balance and around  
16 the old sub plan.

17 BY MS. YU:

18 Q. Would those telephone  
19 conversations have been any different  
20 from the kinds of questions that you  
21 were asking in your e-mails?

22 MR. MALONE: Object to the  
23 form of the question. Lack of  
24 foundation. You haven't actually

1 question to the best of your ability.

2 THE WITNESS: I'm sure that  
3 there are many people that I've  
4 spoken to at different levels about  
5 the cash balance plan. Do I remember  
6 every single conversation? No. Are  
7 there any that stick out in my mind?  
8 Not particularly. Just many  
9 conversations. I can't answer you  
10 any other way.

11 BY MS. YU:

12 Q. Is there anything about a  
13 cash balance plan in and of itself  
14 that you think is age discriminatory?

15 MR. MALONE: Object to the  
16 form of the question insofar as it  
17 calls for a legal opinion from a lay  
18 witness. You can answer to the best  
19 of your ability and understanding.

20 THE WITNESS: My limited  
21 knowledge, not being an expert, what  
22 I am able to understand from written  
23 documentation on the Internet and  
24 publications is that the cash balance

Page 186

Page 188

1 plan when provided to older employees  
2 puts them at a disadvantage.

3 If I was 22 years old or 23  
4 years old starting in a new company  
5 in a cash balance plan, I probably  
6 would have had no objections to it.  
7 BY MS. YU:

8 Q. So if that younger worker  
9 in their twenties stays working for  
10 the same company in a cash balance  
11 plan until their fifties, would the  
12 cash balance plan be age  
13 discriminatory by the time that they  
14 reached their fifties?

15 MR. MALONE: I have the  
16 same objection insofar as it calls  
17 for a legal conclusion.

18 THE WITNESS: Not knowing  
19 that and only going by the material  
20 that was presented at various times  
21 from the company, that that's what  
22 the message was that they presented,  
23 that if a young person moves in the  
24 cash balance plan at a young age

1 referring to?

2 A. What I've read in AARP,  
3 that kind of thing.

4 Q. Okay. So not necessarily  
5 materials from the company?

6 A. No. No.

7 Q. Is there any material that  
8 you've received from the company that  
9 you feel supports your age  
10 discrimination claim?

11 MR. MALONE: Object to the  
12 form of the question as far as it  
13 calls for a legal conclusion from a  
14 lay witness.

15 THE WITNESS: The  
16 information itself? The printed  
17 information that was supplied,  
18 whether -- I'm not sure. I know as  
19 it affects me personally -- could you  
20 repeat that question, because I'm  
21 getting -- we've been going over this  
22 all day long; I'm starting to get  
23 fuzzy.

24 BY MS. YU:

Page 187

Page 189

1 they'll be fine.

2 MS. YU: Could you read  
3 back that answer, please.

4 MR. MALONE: You can read  
5 the question, too.

6 (The reporter read back the  
7 following testimony:

8 "Q. So if that younger  
9 worker in their twenties stays  
10 working for the same company in a  
11 cash balance plan until their  
12 fifties, would the cash balance plan  
13 be age discriminatory by the time  
14 that they reached their fifties?

15 "A. Not knowing that and  
16 only going by the material that was  
17 presented at various times from the  
18 company, that that's what the message  
19 was that they presented, that if a  
20 young person moves in the cash  
21 balance plan at a young age they'll  
22 be fine.")

23 BY MS. YU:

24 Q. What materials are you

1 Q. I'm just asking whether  
2 there is any material that you  
3 received from your employer that you  
4 think supports your claim of age  
5 discrimination with respect to the  
6 cash balance plan.

7 MR. MALONE: I have the  
8 same objection, that it calls for a  
9 legal conclusion.

10 THE WITNESS: The piece  
11 that I would assume would give that  
12 impression would be the age at which  
13 you would be placed into the cash  
14 balance plan. For me that would be  
15 49 years and whatever months.

16 BY MS. YU:

17 Q. I just want to make sure  
18 that I understand. Are you referring  
19 to the grandfathering clause?

20 A. Yes.

21 Q. Are there any other  
22 materials that you feel supports your  
23 claim of age discrimination from the  
24 company?



Page 190

Page 192

1 A. Other than material stating  
2 that 50 years old was the cutoff.

3 Q. Aside from the  
4 grandfathering provision, do you  
5 think the conversion itself to the  
6 cash balance plan was age  
7 discriminatory?

8 MR. MALONE: Object to the  
9 form of the question.

10 THE WITNESS: That's an  
11 open-ended question. I can't answer  
12 that question. I mean, are you  
13 asking for somebody who's 49? 47?  
14 48? 30 years old? I don't -- I  
15 can't answer that question.

16 I just know that people who  
17 are older, not quite 50, but older  
18 people just as far as population  
19 goes, by not being grandfathered  
20 would not acquire the same retirement  
21 benefit.

22 BY MS. YU:

23 Q. So you're saying it depends  
24 on what the age of the individual was

1 balance plan. Let me try it a  
2 different way.

3 From what I gather, the  
4 fact that the grandfathering clause  
5 applied only to certain individuals  
6 with a certain age and level of  
7 service, that is one way that you  
8 feel the cash balance plan is age  
9 discriminatory; is that right?

10 A. Yes.

11 Q. And I just want to make  
12 sure that I have a complete  
13 understanding of all the ways that  
14 you feel that the cash balance plan  
15 is age discriminatory.

16 MR. MALONE: Subject to the  
17 objection that you're asking for  
18 legal conclusions from a non-lawyer.

19 MS. YU: I'm not asking him  
20 to make legal conclusions, but I  
21 understand your objection, so we'll  
22 leave it there.

23 BY MS. YU:

24 Q. I just want to make sure

Page 191

Page 193

1 at the time of the conversion?

2 MR. MALONE: Object again  
3 as to calls for a legal conclusion.

4 THE WITNESS: I would  
5 assume that.

6 BY MS. YU:

7 Q. So if the cash balance plan  
8 had been in place from the time you  
9 started working at the company, would  
10 that cash balance plan have been age  
11 discriminatory?

12 MR. MALONE: Objection.  
13 Lack of foundation. Calls for  
14 speculation.

15 THE WITNESS: I have no  
16 idea. I don't know. You're asking  
17 me to go back in time 27 years and  
18 project forward. I can't do that. I  
19 don't know.

20 BY MS. YU:

21 Q. The reason I stated the  
22 question in that way was to clarify  
23 my understanding of what you're  
24 claiming is wrongful about the cash

1 that I understand all the ways that  
2 you think the cash balance plan harms  
3 you -- harms participants because of  
4 age.

5 MR. MALONE: Same  
6 objection.

7 BY MS. YU:

8 Q. I'm just trying to state  
9 the question to ask, is there  
10 anything about the cash balance  
11 formula itself?

12 And the reason I took it  
13 back to day one is that that takes  
14 the grandfathering clause out of it.  
15 There would be no reason to  
16 grandfather anybody because everybody  
17 had that plan.

18 So if everybody had that  
19 plan, do you think there's anything  
20 age discriminatory about a cash  
21 balance plan in and of itself?

22 MR. MALONE: Objection.  
23 Calls for speculation.

24 THE WITNESS: It's

Page 194

Page 196

1 conjecture. I can't answer that  
2 question. You're asking me to answer  
3 something that I have no knowledge of  
4 or no experience in. I don't know.

5 I can't -- I can't honestly  
6 tell you yes, it is, or no, it isn't  
7 age discriminatory based on starting  
8 at 29, 28, 25, or 39. I can only  
9 tell you from my experience and in  
10 that age that certainly appears to be  
11 that way.

12 BY MS. YU:

13 Q. Is it your understanding  
14 that you receive interest credits as  
15 well under the cash balance plan?

16 A. Yes.

17 Q. And do those interest rates  
18 fluctuate?

19 MR. MALONE: Object to the  
20 form of the question.

21 THE WITNESS: Yes. I  
22 believe they're based on a 30-year  
23 treasury note, something along those  
24 lines.

1 THE WITNESS: It would be  
2 difficult for me to try to answer  
3 that question without violating the  
4 client-attorney relationship.

5 BY MS. YU:

6 Q. Can you try?

7 A. Rephrase it. Restate it,  
8 the question.

9 Q. I'm asking whether you feel  
10 that any fluctuations in the interest  
11 rate as applied as part of the  
12 interest credit under the cash  
13 balance plan has resulted in harm to  
14 you.

15 MR. MALONE: Can you answer  
16 that question without revealing the  
17 substance of our communications on  
18 that subject matter?

19 THE WITNESS: The interest  
20 credits that I received, I do not  
21 know whether they're right or they're  
22 wrong, if they're harmful, if they're  
23 good. I don't know.

24 (Exhibit D-20 was marked

Page 195

Page 197

1 BY MS. YU:

2 Q. Do you feel that you've  
3 been harmed as a result of  
4 fluctuations in the interest rate  
5 that has been applied under the cash  
6 balance plan?

7 A. The only way I can answer  
8 that is knowing all those aspects is  
9 that --

10 MR. MALONE: Can you answer  
11 that question without getting into  
12 discussions that we've had in the  
13 context of an attorney-client  
14 relationship?

15 THE WITNESS: Difficult.

16 MR. MALONE: Answer it as  
17 best you can without revealing the  
18 substance of our communications. If  
19 you can't, you can't.

20 But if you can fairly meet  
21 the substance of her question without  
22 revealing things that we exchanged as  
23 part of our attorney-client  
24 relationship, then you should.

1 for identification.)

2 BY MS. YU:

3 Q. Mr. Charles, do you  
4 recognize the exhibit that's been  
5 marked as D-20?

6 A. Yes.

7 Q. Did you draft any part of  
8 this document?

9 A. You say draft. Did I write  
10 any of it?

11 Q. Yes.

12 A. I supplied some information  
13 I'm sure that was utilized in this,  
14 but I did not draft it, no.

15 Q. What information did you  
16 provide that was used in preparing  
17 the Complaint that's been marked as  
18 D-20?

19 MR. MALONE: Hold on a  
20 second. Can you read that back? I  
21 need to think about this one a little  
22 bit.

23 (The reporter read back the  
24 following testimony:

Page 198

Page 200

1 "Q. What information did  
2 you provide that was used in  
3 preparing the Complaint that's been  
4 marked as D-20?")  
5 MR. MALONE: Here's my  
6 concern. When you ask an open-ended  
7 question like that, there's stuff  
8 that he's given me that was given me  
9 clearly for the purpose of winding up  
10 in the Complaint.  
11 Then there's other  
12 information we've exchanged which may  
13 or may not be reflected in the  
14 document. So it would be more  
15 comfortable for me and less likely to  
16 generate an instruction not to answer  
17 if you would point him at a  
18 particular segment of the Complaint.  
19 It's your deposition;  
20 you'll do it whatever way you want,  
21 but just from my perspective I think  
22 that might actually might work  
23 better.  
24 MS. YU: I understand your

1 balance to an annuity commencing at  
2 age 65. Is that your understanding?  
3 A. Yes.  
4 Q. Then there are allegations  
5 with respect to the annuity amount  
6 fluctuating from year to year. It  
7 says specifically that your annuity  
8 decreased in 2001, 2002, and 2003.  
9 Is that the basis for your  
10 feeling that the cash balance plan is  
11 age discriminatory?  
12 A. There are several bases to  
13 that, this being one of them.  
14 Q. When you say there are  
15 several bases for that, you mean  
16 there are several bases for your  
17 feeling that the cash balance plan is  
18 age discriminatory?  
19 A. You're saying feeling.  
20 Feelings mean something different  
21 than actual numbers. So if you're  
22 asking me how I feel, that's totally  
23 different than what numbers may  
24 reflect.

Page 199

Page 201

1 concern. As soon as I asked the  
2 question I -- not that I'm soliciting  
3 any attorney-client privileged  
4 information here.  
5 MR. MALONE: I didn't think  
6 you were. I don't know what he's  
7 going to say.  
8 MS. YU: Understood.  
9 BY MS. YU:  
10 Q. Mr. Charles, if you take a  
11 look at page 13 of Exhibit D-20 and  
12 specifically paragraph 41.  
13 MR. MALONE: You should  
14 read the paragraph carefully yourself  
15 and let her then ask some questions  
16 about it rather than try to do both  
17 at once.  
18 BY MS. YU:  
19 Q. Have you had a chance to  
20 review the paragraph?  
21 A. That one paragraph, yes.  
22 Paragraph 41?  
23 Q. Yes. Paragraph 41  
24 describes the conversion of account

1 So to answer your question,  
2 do I feel that the cash balance plan  
3 is age discriminatory based on this  
4 and solely on this or other things?  
5 You're saying other things.  
6 Q. You said this was one of  
7 several things.  
8 A. Right. The other thing  
9 is --  
10 Q. Let's focus on the thing  
11 first, though.  
12 A. Okay.  
13 Q. And my use of the word feel  
14 like it's age discriminatory is  
15 probably not a good word. I'm trying  
16 to avoid your objection.  
17 So I am not asking you to  
18 suddenly become an attorney to be  
19 able to make a legal conclusion, but  
20 from what I understand the reason  
21 that you brought this lawsuit is  
22 because you feel that, or you think,  
23 or it is, and that remains to be  
24 determined, I guess we haven't gone

Page 202

Page 204

1 through the answer part of what your  
2 claims are, but I assume that one of  
3 the claims that you are asserting is  
4 that the cash balance plan is age  
5 discriminatory.

6 A. Yes.

7 Q. And I assume that because  
8 you were bringing the age  
9 discrimination claim that it's your  
10 position that there is support for  
11 that.

12 A. It's one of the reasons.

13 Q. So let me clarify that the  
14 decrease in your annuity that's  
15 described in paragraph 41, is that  
16 one of the reasons that you think  
17 supports your claim of age  
18 discrimination?

19 A. Yes.

20 Q. How so?

21 A. Reduced benefits.

22 Q. Do you know why your  
23 annuity decreased from year to year?

24 MR. MALONE: Can you answer

1 your claim that the cash balance plan  
2 was age discriminatory.

3 MR. MALONE: Object insofar  
4 as it calls for a legal conclusion.

5 Testify to the best of your knowledge  
6 and understanding without revealing  
7 the substance of our communications.

8 THE WITNESS: As it's  
9 formulated in 41, in my eyes it  
10 indicates that there is some form of  
11 discrimination. I'm having  
12 difficulty answering your questions  
13 because you seem to keep going back  
14 and back on the same question.

15 BY MS. YU:

16 Q. I need to have a clear  
17 understanding of what the basis for  
18 your age discrimination claim is, and  
19 I would like to know how paragraph 41  
20 fits in to your age discrimination  
21 claim.

22 MR. MALONE: Same objection  
23 to the extent it calls for a legal  
24 conclusion. And, again, caution the

Page 203

Page 205

1 that without getting into substance  
2 of our communications?

3 THE WITNESS: No.

4 BY MS. YU:

5 Q. Paragraph 41 also states  
6 that in 2004 your annuity increased  
7 by 8.43 percent. Is that a fact that  
8 supports your claim of age  
9 discrimination?

10 MR. MALONE: Object to the  
11 form of the question. You're not  
12 fairly construing the allegation as a  
13 whole; you've quoted one part of the  
14 sentence.

15 THE WITNESS: 41 in itself  
16 is one aspect of my Complaint. I  
17 can't narrow in on one number, one  
18 line, and one sentence. I can't say  
19 that because one year it decreased,  
20 that's the reason why. It's in its  
21 entirety.

22 BY MS. YU:

23 Q. Okay. Explain to me how  
24 paragraph 41 in its entirety supports

1 witness not to reveal the substance  
2 of communications with counsel.

3 THE WITNESS: Think of it  
4 as one item, one proof, one aspect of  
5 the whole picture, the way it's laid  
6 out is presenting a conclusion  
7 that -- based on these numbers.

8 I don't know how else I can  
9 answer that question that you would  
10 like me to answer without getting  
11 into client-attorney information.

12 BY MS. YU:

13 Q. How are the fluctuations  
14 described in paragraph 41, how were  
15 they caused on account of age?

16 MR. MALONE: Objection to  
17 the form of the question. Also be  
18 careful when you frame your response  
19 that you do not reveal the substance  
20 of our communications.

21 THE WITNESS: Since this is  
22 part of our brief -- Complaint, I  
23 can't really answer it any more than  
24 the way I have without getting into

Page 206

Page 208

1 client-attorney privileges. I cannot  
2 answer you any other way.

3 BY MS. YU:

4 Q. Do you know, do you  
5 yourself have an understanding of  
6 what caused these fluctuations in  
7 your annuity?

8 MR. MALONE: That question  
9 calls for a yes-or-no answer.

10 THE WITNESS: Yes.

11 BY MS. YU:

12 Q. What is your personal  
13 knowledge?

14 MR. MALONE: Can you answer  
15 that question without revealing the  
16 substance of our communications?

17 MS. YU: It's about his  
18 knowledge, not about your  
19 communications.

20 MR. MALONE: But if his  
21 knowledge is derived from our  
22 communications and our work product,  
23 it's privileged.

24 MS. YU: How does it become

1 about the factual allegations that  
2 appear in --

3 MR. MALONE: I will tell  
4 you that the factual allegations  
5 about how his accrued benefit  
6 decreased in particular years and  
7 increased in particular years  
8 represents attorney-work product.

9 MS. YU: Okay.

10 BY MS. YU:

11 Q. Mr. Charles, do you have  
12 information regarding your annuity at  
13 normal retirement age for the years  
14 from 1999 through 2004?

15 MR. MALONE: That's a yes  
16 or no.

17 THE WITNESS: Yes.

18 BY MS. YU:

19 Q. How did you obtain that  
20 information?

21 A. Through the Vanguard  
22 estimates.

23 Q. When did you obtain those  
24 estimates?

Page 207

Page 209

1 his knowledge if it's just  
2 communication that you made to him?

3 MR. MALONE: Client comes  
4 to a lawyer with a problem; client  
5 gives lawyer background facts about  
6 client's situation. Lawyer conducts  
7 an investigation designed to  
8 determine client's rights based upon  
9 the facts provided the client.

10 The lawyer conducts sources  
11 and develops data and information.  
12 Lawyer conveys that data and  
13 information to client in conjunction  
14 and in the course of rendering legal  
15 advice and in anticipation of  
16 prospective litigation.

17 I think that you're going  
18 to find that any knowledge that he  
19 has on the subject of these  
20 fluctuations came from me. In fact,  
21 you haven't established yet that he  
22 knew about these fluctuations before  
23 he contacted a lawyer.

24 MS. YU: I'm just talking

1 A. In a prior documentation.  
2 The dates are there.

3 MR. MALONE: Can you read  
4 back the last two questions and  
5 responses?

6 (The court reporter read  
7 back the following:

8 "Q. Mr. Charles, do you  
9 have information regarding your  
10 annuity at normal retirement age for  
11 the years from 1999 through 2004?

12 "A. Yes.

13 "Q. How did you obtain  
14 that information?

15 "A. Through the Vanguard  
16 estimates.")

17 BY MS. YU:

18 Q. So if we look at Exhibit  
19 D-18 --

20 A. Is that 18?

21 MR. MALONE: Yes. That's  
22 this one.

23 BY MS. YU:

24 Q. Which of the estimates

Page 210

Page 212

1 contain that information?

2 A. I'm sorry?

3 Q. Which of the estimates that  
4 appear on the first page of Exhibit  
5 D-18 contain that information?

6 A. Every single one. Each  
7 estimate provides a lump sum and  
8 annuity amount.

9 Q. At normal retirement age?

10 A. At the projected retirement  
11 age that I requested. There is one  
12 in there for the age 65. We're  
13 looking for age 65. It's here.

14 Q. Did you create any of these  
15 pension estimates at the request of  
16 your attorney?

17 A. Yes.

18 MR. MALONE: Those are the  
19 ones that you don't have. They did  
20 not form the basis of that allegation  
21 in paragraph 41.

22 MS. HOFFMAN: When you say  
23 "they," which do you mean?

24 MR. MALONE: None of the

1 (Discussion off the  
2 record.)

3 MR. MALONE: While we were  
4 off the record we had a colloquy to  
5 try and explain for the benefit of  
6 the defendant the source data  
7 underlying the allegations of  
8 paragraph 41, and in words or in  
9 substance what I tried to convey to  
10 them and hopefully explained was  
11 this:

12 Mr. Charles cannot look at  
13 his annual account statements under  
14 the cash balance plan and tell what  
15 his accrued benefit defined as a  
16 single life annuity commencing at age  
17 65 is.

18 Mr. Charles provided me  
19 with a variety of data. I had, as  
20 you can see from account statements,  
21 his date of birth, his hire date, his  
22 years of service. I had his account  
23 balances at various points in time.

24 Taking that information we

Page 211

Page 213

1 estimates form the basis for that.  
2 That's why I said the paragraph is  
3 work product.

4 MS. HOFFMAN: These  
5 estimates or the estimates you  
6 withheld?

7 MR. MALONE: None of the  
8 estimates generated from the Vanguard  
9 site whether those produced in D-18  
10 nor the six that we've indicated that  
11 we have withheld on the basis of work  
12 product formed the predicate for the  
13 allegations related to his accrued  
14 benefit as stated in paragraph 41 of  
15 his Complaint.

16 Instead, as I indicated to  
17 you earlier, that information is  
18 attorney work product derived from  
19 data.

20 MS. YU: It was provided by  
21 Mr. Charles?

22 MR. MALONE: Can we go off  
23 the record and maybe I can clarify  
24 this and then we can go back on?

1 were then able to generate an annual  
2 accrued benefit expressed as an age  
3 65 annuity for each year, and it is  
4 that work product of ours that  
5 underlies the allegations in  
6 paragraph 41 in the Complaint.

7 The work product is derived  
8 from the basic raw data that we've  
9 been talking about. One, when did  
10 you start, what -- you know, all  
11 that. But he didn't come to me and  
12 say, My annuity went down by 8.43  
13 percent.

14 Okay. That in substance is  
15 what we discussed, and that's the  
16 representation that I'll make with  
17 respect to paragraph 41.

18 MS. YU: Very good.

19 BY MS. YU:

20 Q. Taking a look at Exhibit  
21 D-20 again, can you turn to page 14.

22 A. 14.

23 Q. Under Count I there is an  
24 allegation with respect to minimum



Page 214

Page 216

1 accrual requirements. What's your  
2 understanding of the claim that you  
3 are asserting in Count I?

4 MR. MALONE: Give her your  
5 best layman's understanding. Don't  
6 tell her the substance of things that  
7 I told you.

8 THE WITNESS: It's going to  
9 be difficult to separate those  
10 conversations. I'll try to answer  
11 this way. That I know under ERISA  
12 there are certain regulations for  
13 funding that must be met.

14 And I believe that the cash  
15 balance plan under the work that  
16 was -- we have done prove that it's  
17 not meeting them.

18 BY MS. YU:

19 Q. Count II is brought under  
20 Section 204 (b)(1)(G) of ERISA. Can  
21 you tell me what your understanding  
22 is of the claims that you are  
23 asserting in Count II.

24 MR. MALONE: Take your time

1 form of question. That calls for a  
2 legal conclusion. You can testify to  
3 your understanding, but you can't  
4 testify to what I told you.

5 THE WITNESS: Accrued  
6 benefit is a benefit that develops  
7 over a period of years.

8 BY MS. YU:

9 Q. Is it your understanding  
10 that an accrued benefit is expressed  
11 in the form of an annuity at the age  
12 of 65 of normal retirement age?

13 A. As it pertains to the cash  
14 balance plan?

15 Q. Yes.

16 A. Yes.

17 Q. That is your understanding?

18 A. (Witness nods.)

19 MR. MALONE: You've got to  
20 verbalize.

21 THE WITNESS: Yes.

22 BY MS. YU:

23 Q. Count III is a claim under  
24 Section 204 (b)(1)(H) --

Page 215

Page 217

1 to read that section of the Complaint  
2 which appears on page 14 and 15 of  
3 Exhibit D-20, and under the same  
4 instructions, give her your best  
5 layman's understanding; don't give  
6 her the substance of things that I've  
7 told you as your lawyer.

8 THE WITNESS: Could you  
9 repeat your question?

10 BY MS. YU:

11 Q. What is your understanding  
12 of the claims that you are asserting  
13 in Count II of your Complaint?

14 A. Again, as I interpret what  
15 ERISA states that in subsequent years  
16 under the cash balance plan I don't  
17 receive the full benefit that I  
18 should be getting. That's as far as  
19 I can go without revealing other  
20 sources.

21 Q. Do you know what an accrued  
22 benefit is as that term is defined  
23 under ERISA?

24 MR. MALONE: Object to the

1 MR. MALONE: Count III is  
2 stayed so we shouldn't be taking any  
3 discovery as to it.

4 MS. YU: I'm sorry. You're  
5 absolutely right.

6 MR. MALONE: You fought  
7 valiantly.

8 MS. YU: Thank you for the  
9 reminder.

10 BY MS. YU:

11 Q. Moving on to Count IV, it's  
12 a claim brought under section 204(h)  
13 of ERISA. What is your understanding  
14 of the claims you are asserting in  
15 Count IV?

16 MR. MALONE: Reread Count  
17 IV as set forth on D-20, testify to  
18 your layman's understanding without  
19 revealing the substance of our  
20 communications.

21 THE WITNESS: Could you ask  
22 your question again, please.

23 BY MS. YU:

24 Q. What is your understanding

Page 218

Page 220

1 of the claims that you are asserting  
2 in Count IV of your Complaint?

3 A. Again, without trying to  
4 break our bond, what I believe is  
5 that the current plan as it exists  
6 does not provide the same benefit,  
7 employees were not notified that the  
8 new plan would provide less benefit,  
9 and that this reduction, because it  
10 was not explained to us, fails this  
11 article.

12 Q. Can we take a look at  
13 Exhibits D-5 and D-6.

14 MR. MALONE: Sure. It will  
15 just take me a minute to go find them  
16 in the pile.

17 THE WITNESS: We're not  
18 supposed to be going backwards.

19 MR. MALONE: D-5 and D-6?

20 MS. YU: Yes.

21 MR. MALONE: I grabbed D-5  
22 and D-4. I'm sorry. Let me get my  
23 act together here.

24 BY MS. YU:

1 or around December 21st, '98 or  
2 January of 2000. I don't even  
3 remember where I may have acquired  
4 this document.

5 Q. I understand that.

6 A. Right.

7 Q. My question has to do with  
8 whether you have any personal  
9 knowledge regarding whether or not  
10 your employer sent this document to  
11 you.

12 A. Again, they -- I can't say  
13 yes or no. I don't know. There's no  
14 address. It may have been.

15 MR. MALONE: She's asking  
16 in substance, do you have any facts  
17 in your knowledge that you could rely  
18 upon to say I didn't get this?

19 MS. YU: Or they didn't  
20 send it.

21 MR. MALONE: I think that's  
22 what she's trying to get at.

23 THE WITNESS: No. I don't  
24 have any facts to prove it one way or

Page 219

Page 221

1 Q. Mr. Charles, we talked  
2 about Exhibit D-5 and Exhibit D-6  
3 earlier, and you testified that you  
4 did not have a recollection one way  
5 or the other as to whether you  
6 received these documents in 1998.

7 A. Yes.

8 Q. Do you have any reason to  
9 believe that these documents were not  
10 mailed to you by your employer?  
11 Let's take one exhibit at a time.

12 MR. MALONE: Thank you.

13 THE WITNESS: Okay.

14 BY MS. YU:

15 Q. Let's take D-6. D-6 is  
16 dated December 21, 1998. Do you have  
17 any reason to believe that your  
18 employer did not send this document  
19 to you on or around December 21st,  
20 1998?

21 A. Since it's not addressed to  
22 me, I can assume that it came from  
23 some source. I don't know where. I  
24 cannot say that I did not see it on

1 the other.

2 BY MS. YU:

3 Q. I'm going to do the same  
4 thing with D-5. Do you have any  
5 personal knowledge, or are there  
6 other facts that you can point to  
7 that establish that your employer did  
8 not send this document that's in D-5  
9 to you in 1998?

10 MR. MALONE: I'm going to  
11 object to the form of that just  
12 because, as we've discussed before,  
13 the documents are undated and we have  
14 no way of knowing the date. If you  
15 could break it down, I would be  
16 happier.

17 In other words, ask him if  
18 he knows and then tie it to the date.  
19 You would have a cleaner record that  
20 way.

21 MS. YU: Okay.

22 BY MS. YU:

23 Q. Regardless of the time  
24 frame -- I'll just take it from

Page 222

Page 224

1 there -- do you have any personal  
2 knowledge, are there any facts that  
3 you can point to that show that this  
4 document that's in D-5 was not sent  
5 to you?

6 A. I don't have any facts to  
7 prove it one way or the other. I  
8 know that these types of information  
9 were just on a desk, in a holder, on  
10 a bulletin board.

11 You're walking by, oh,  
12 what's that. That kind of thing.  
13 They were not directly mailed to  
14 individuals.

15 Q. Do you know for a fact that  
16 this particular document that's been  
17 marked as Exhibit D-5 was one of  
18 those documents that you were  
19 describing, the materials that were  
20 left to pick up? Do you know with  
21 certainty that this was one of those  
22 documents?

23 A. I don't know for certainty  
24 whether it was left, whether it was

1 disseminated. If you know when it  
2 was disseminated --

3 MS. YU: That's one thing.  
4 I'm also asking sort of a negative of  
5 that.

6 MR. MALONE: I understand.  
7 BY MS. YU:

8 Q. Do you know that it wasn't  
9 in 1998? Now, I understand your  
10 testimony that there was some  
11 information that was left for  
12 employees to pick up and all that.

13 But my question is specific  
14 to this particular exhibit and the  
15 time frame that we're talking about  
16 now that we've added to this  
17 question.

18 And the question is, do you  
19 have any personal knowledge to show  
20 that this exhibit, D-5, was not sent  
21 to you by your employer in 1998?

22 A. The difficulty with that  
23 question, you keep saying to me, was  
24 it sent to me.

Page 223

Page 225

1 printed. I have no recollection. I  
2 can't answer that.

3 Q. So, again, you don't have  
4 any personal knowledge with respect  
5 to whether or not your employer in  
6 fact sent Exhibit D-5 to you?

7 A. No.

8 Q. On top of that, you don't  
9 have any information that this  
10 document that's in Exhibit D-5 was  
11 not sent to you sometime in 1998?

12 A. The only way I can answer  
13 that is that this type of device,  
14 communication was not, to my  
15 knowledge, mailed, presented,  
16 hand-delivered to anyone.

17 So I can't say for sure  
18 that I did or didn't walk by, pick  
19 one up, oh, what is that, or didn't.  
20 I don't know.

21 Q. That wasn't my question.

22 MR. MALONE: She's trying  
23 to focus you on a temporal scope.  
24 It's important to her when this was

1 Q. I'm not saying was it sent  
2 to you. I'm not asking you that.

3 MR. MALONE: Why don't you  
4 rephrase the question, made available  
5 to you, which I think would embrace  
6 his concept of it being left on  
7 desktops or kiosks or on bulletin  
8 boards, and then focus the question  
9 on temporal scope.

10 Is that what you're  
11 trying --

12 MS. HOFFMAN: How about the  
13 document was or wasn't issued.

14 MR. MALONE: Issued is  
15 fine. Issue works. You say sent; he  
16 thinks through the mail.

17 THE WITNESS: Or handed to  
18 me.

19 MS. YU: I can do it both  
20 ways.

21 MR. MALONE: That's fine.

22 MS. YU: I can do it both  
23 ways.

24 MR. MALONE: That's cool.

Page 226

Page 228

1 Nice clean record.  
 2 BY MS. YU:  
 3 Q. I want my question answered  
 4 as well. So we'll do it your way  
 5 first. The question is, Exhibit  
 6 D-5 --  
 7 A. Yes.  
 8 Q. -- do you have any personal  
 9 knowledge that this exhibit was not  
 10 issued to you at some point during  
 11 the year 1998?  
 12 A. No.  
 13 Q. Do you have any personal  
 14 knowledge that Exhibit D-5 was not  
 15 sent to you by your employer at some  
 16 point during 1998?  
 17 A. I'm confident that it was  
 18 not sent to me via mail because of  
 19 the way this is distributed. It's  
 20 not mailed. It is a hand-out at a  
 21 kiosk or a table top.  
 22 Q. Do you have specific  
 23 knowledge with respect to this  
 24 particular exhibit that that was the

1 provided or it wasn't provided. I  
 2 don't remember the document. I don't  
 3 remember picking it up. I don't  
 4 remember reading it.  
 5 I can't answer that any  
 6 other way, other than I know I'm  
 7 repeating myself, it was not mailed  
 8 to me.  
 9 BY MS. YU:  
 10 Q. How do you know it was not  
 11 mailed to you?  
 12 A. Because this type of  
 13 information was not sent through the  
 14 mail.  
 15 Q. So you know with certainty  
 16 that this type of information was  
 17 never sent to you in the mail?  
 18 A. As far as I know, I've  
 19 never received it in the mail.  
 20 Q. But you don't have any  
 21 recollection with respect to this  
 22 particular document --  
 23 A. No.  
 24 Q. -- that's Exhibit D-5?

Page 227

Page 229

1 way this particular exhibit in D-5  
 2 was issued?  
 3 A. Could you repeat that one  
 4 more time?  
 5 Q. You've talked about how  
 6 certain information was left for  
 7 employees to pick up from time to  
 8 time by your employer; is that right?  
 9 A. Yes.  
 10 Q. Do you know with certainty  
 11 that the Exhibit D-5, the information  
 12 that's presented in the facts  
 13 newsletter was presented in that way,  
 14 that it was left for individuals to  
 15 pick up? Do you have a specific  
 16 recollection of this particular  
 17 exhibit?  
 18 MR. MALONE: As contrasted  
 19 with something that might be laid out  
 20 the same way, similar font, similar  
 21 typeface?  
 22 MS. YU: Correct.  
 23 THE WITNESS: I have no  
 24 knowledge as to whether it was

1 A. No.  
 2 MS. YU: Can we take a  
 3 quick break?  
 4 MR. MALONE: That would be  
 5 wonderful.  
 6 RECESS  
 7 BY MS. YU:  
 8 Q. Let's do some calculations.  
 9 A. Let's do some calculations.  
 10 Q. Yes. We're going to  
 11 calculate what your accrued benefit  
 12 under the old plan would be based on  
 13 the e-mail that was sent to you; it's  
 14 D-16.  
 15 MR. MALONE: I remember  
 16 that. I don't know if we're going to  
 17 be able to do a calculation but we'll  
 18 see.  
 19 MS. YU: We should have  
 20 brought a calculator.  
 21 THE WITNESS: Sorry. I  
 22 don't have one.  
 23 MR. MALONE: Well, we can  
 24 certainly button down what the inputs

Page 230

Page 232

1 would be. Whether we'll be able to  
2 generate calculations, we'll see.

3 MS. YU: Fortunately Susan  
4 did them on Excel for us, so we can  
5 at least agree on --

6 MR. MALONE: I don't know  
7 if she's going to pass Dalbert  
8 especially with that hand.  
9 BY MS. YU:

10 Q. It says multiply 1.6  
11 percent by your average salary. And  
12 why don't we just assume the 86,000.

13 MR. MALONE: Okay. As his  
14 average over five?

15 MS. YU: As his average.  
16 Let's just assume that that's it.  
17 And if we need to revise that based  
18 on actual salary information we can,  
19 but this will give us at least an  
20 estimate of what his pension would  
21 have been under the old plan.  
22 So it's 86,000, we'll  
23 multiply it by 1.6 percent, we get  
24 1,376.

1 MR. MALONE: Okay. I'm  
2 going to assume for the purposes of  
3 this record, because this is pretty  
4 hypothetical, that that's an accurate  
5 calculation.

6 MS. HOFFMAN: Since ours is  
7 higher than yours.

8 MR. MALONE: It falls under  
9 the old zealous advocate thing.

10 MS. YU: Divided by 12, and  
11 we get 3,096.

12 MR. MALONE: \$3,096.

13 MS. YU: Which would be a  
14 rough estimate of what his monthly  
15 annuity would be at normal retirement  
16 age under the old plan.

17 MR. MALONE: And any age  
18 after age 55 under the old plan.

19 MS. HOFFMAN: True but  
20 irrelevant.

21 MR. MALONE: Depends upon  
22 your perspective.

23 MS. YU: In other words,  
24 the accrued benefit under the old

Page 231

Page 233

1 MR. MALONE: 1,376, is 1.6  
2 percent of 86,000.

3 MS. YU: 86,000.

4 MR. MALONE: I probably  
5 have a calculator on here.

6 MS. HOFFMAN: I can give it  
7 to you on touch screen.

8 MR. MALONE: This is fine.  
9 I've never used this before.

10 Bingo. I agree. 1.6  
11 percent of 86,000 equals \$1,376.

12 MS. YU: Then you multiply  
13 it by your years of service, and  
14 we'll just assume all of your years  
15 of service, which was the 27 years  
16 that you calculated.

17 THE WITNESS: Calculated  
18 for today, okay.

19 MS. YU: And we get 37,152.

20 MR. MALONE: I come up with  
21 35,152.

22 MS. YU: 35,152?

23 MS. HOFFMAN: No.

24 MS. YU: 37,152.

1 plan --

2 MR. MALONE: This --

3 MS. YU: -- would be an  
4 estimate of that.

5 MR. MALONE: -- would be an  
6 estimate assuming that the salary  
7 information is accurate and assuming  
8 that your calculations are accurate,  
9 would be an estimate.

10 MS. YU: Then if we look at  
11 D-18 again.

12 Look at JMC 478, which is  
13 the calculation which estimates Mr.  
14 Charles' accrued benefit as that term  
15 is defined by ERISA with respect to  
16 the cash balance plan.

17 MR. MALONE: It's an  
18 estimate generated by Vanguard.

19 MS. YU: Yes.

20 MR. MALONE: Okay.

21 MS. YU: With retirement  
22 date of November 1st, 2014, which is  
23 age 65 for Mr. Charles.

24 MR. MALONE: Uh-huh.

Page 234

Page 236

1 MS. YU: So if we compare  
2 the numbers of the annuity amounts,  
3 the annuity that is estimated with  
4 respect to the cash balance plan at  
5 normal retirement age for Mr. Charles  
6 is \$3,306.64.

7 MR. MALONE: That's what's  
8 reflected on JMC 478 as an estimate.

9 MS. YU: Yes.

10 BY MS. YU:

11 Q. So even comparing what your  
12 pension at normal retirement age is  
13 estimated to be under the cash  
14 balance plan, in comparing that with  
15 what your accrued benefit would have  
16 been under the old plan, the estimate  
17 for your pension under the cash  
18 balance plan is higher.

19 MR. MALONE: Object to the  
20 form of the question. Because we  
21 don't know all the assumptions that  
22 go into the estimate. For example,  
23 does this reflect working through  
24 normal retirement age in which case

1 numbers and the calculations, let's  
2 assume that the benefit under the  
3 cash balance formula in the form of  
4 an annuity at age 65 is higher than  
5 your accrued benefit under the old  
6 plan, which would be a normal  
7 retirement age annuity, if that were  
8 the case, do you feel you would have  
9 been harmed?

10 MR. MALONE: I'm going to  
11 object to the question for the same  
12 basis, again, and I also think it's  
13 misleading given the structure of the  
14 old plan with the retirement rights  
15 in the ad to focus solely upon his  
16 age 65 under that plan.

17 THE WITNESS: I think the  
18 way you calculated that annuity is  
19 not exactly right. You're stating my  
20 age currently, my years current, and  
21 this is for age 65. This is eight  
22 years down the road. That's not  
23 today.

24 So that's why I can't say I

Page 235

Page 237

1 he would have different years of  
2 credited service.

3 BY MS. YU:

4 Q. If your benefit at normal  
5 retirement age in the form of annuity  
6 under the cash balance plan were  
7 higher than your crude benefit under  
8 the old plan, would you be harmed by  
9 the cash balance plan?

10 MR. MALONE: I'll object to  
11 the form of the question as calling  
12 for a legal conclusion by a lay  
13 witness.

14 THE WITNESS: Since I don't  
15 have numbers provided to me that are  
16 exact from Vanguard, I can't really  
17 say yes or no that that is true. I  
18 don't know.

19 BY MS. YU:

20 Q. I understand the objection  
21 that Mr. Malone is making, which is  
22 why I stated my question in a  
23 hypothetical.

24 So putting aside the

1 would -- one would be better than the  
2 other.

3 BY MS. YU:

4 Q. I understand your  
5 testimony, but my question is  
6 slightly different from that, and  
7 because I understand those issues,  
8 let's put aside the calculations we  
9 did and the numbers and just assume  
10 that the annuity at normal retirement  
11 age under the cash balance plan is  
12 higher than the annuity at normal  
13 retirement age under the old plan  
14 under the same assumptions.

15 MR. MALONE: And under the  
16 same objection.

17 BY MS. YU:

18 Q. We're doing apples to  
19 apples now. But if looking at apples  
20 to apples your benefit calculated as  
21 an annuity at age 65 under the cash  
22 balance plan, assuming that that's  
23 greater than what you had under the  
24 old plan, do you still feel like you



Page 238

1 have been harmed by the cash balance  
2 plan?

3 MR. MALONE: Same  
4 objection.

5 THE WITNESS: With your  
6 assumptions that you're stating, how  
7 can I not agree to that question?  
8 Your assumptions state that the cash  
9 balance plan at age 65 would have a  
10 greater annuity value than the old  
11 retirement plan.

12 So under that assumption, I  
13 have to agree. But to say I myself  
14 personally agree that I will have  
15 greater benefit, I don't know that.  
16 I can't say that. I can only go by  
17 your assumptions and agree with your  
18 assumption.

19 MS. YU: I don't have any  
20 further questions.

21 MR. MALONE: I have no  
22 questions for you today. Thank you.

23 (Testimony concluded at  
24 4:30 p.m.)

Page 239

1 WITNESS CERTIFICATION

2  
3 I hereby certify that I  
4 have read the foregoing transcript of  
5 my deposition testimony, and that my  
6 answers to the questions propounded,  
7 with the attached corrections or  
8 changes, if any, are true and  
9 correct.

10  
11  
12 \_\_\_\_\_  
DATE JEROME MICHAEL CHARLES

13  
14  
15  
16  
17  
18 \_\_\_\_\_  
PRINTED NAME

19  
20  
21  
22  
23  
24

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF DELAWARE

3 PORTIONS CONFIDENTIAL

4 J. MICHAEL CHARLES; MAURICE W.  
5 WARD, JR.; and JOSEPH I. FINK, JR.,  
6 on behalf of themselves and  
7 all others similarly situated,

8 Plaintiff

9 V C.A. No. 05-702 (SLR)

10 PEPCO HOLDINGS, INC.; CONECTIV, and  
11 PEPCO HOLDINGS RETIREMENT PLAN,  
12 Defendants

13 - - -

14 THOMAS S. TROUP, on behalf of himself  
15 and all others similarly situated,

16 Plaintiff

17 V C.A. No. 06-10 (SLR)  
18 PEPCO HOLDINGS, INC.; CONECTIV, and  
19 PEPCO HOLDINGS RETIREMENT PLAN,

20 Defendants

21 Oral deposition of JOSEPH  
22 I. FINK, taken at the law offices of  
23 Pepper Hamilton LLP, 3000 Two Logan  
24 Square, Eighteenth and Arch Streets,  
Philadelphia, Pennsylvania, on  
Thursday, January 11, 2007,  
commencing at 9:34 a.m., before  
Barbara McKeon Quinn, a Registered  
Merit Reporter and Notary Public,  
pursuant to notice.

Page 2

Page 4

1 APPEARANCES:  
 2 JOSEPH G. SAUDER, ESQUIRE  
 josephsauder@chimicles.com  
 3 CHIMICLES & TIKELLIS LLP  
 One Haverford Centre  
 4 361 West Lancaster Avenue  
 Haverford, Pennsylvania 19041  
 5 610-642-8500  
 Counsel for Plaintiff

6 BARAK A. BASSMAN, ESQUIRE  
 7 bassmanb@pepperlaw.com  
 PEPPER HAMILTON LLP  
 8 3000 Two Logan Square  
 18th & Arch Streets  
 9 Philadelphia, Pennsylvania 19103  
 215-981-4000  
 10 Counsel for Defendants

## 11 EXAMINATION INDEX

12 JOSEPH I. FINK  
 13 BY MR. BASSMAN 3

14  
 15  
 16 EXHIBIT INDEX  
 17 MARKED

18 Defendant's  
 31 Conectiv's Cash Balance 49  
 19 Pension Plan statement  
 for Joseph Fink as of  
 1/1/99, JIF 1 through 14  
 20 32 Vanguard Pension 49  
 Estimator, JIF 18 through  
 21 39  
 22  
 23  
 24

1 know, you shrug your shoulders, you  
 2 nod your head. Unfortunately today  
 3 you can't do that. All your  
 4 responses have to be verbal.

5 Is that okay?

6 A. That's fine.

7 Q. Also, to help the court  
 8 reporter out, we should both try not  
 9 to talk over each other. It becomes  
 10 very difficult for her to sort out  
 11 who's talking if, you know, I start  
 12 talking, you interrupt me or I  
 13 interrupt you.

14 So I'm going to make an  
 15 effort not to talk while you're  
 16 talking. I'd ask that you do the  
 17 same for me.

18 A. Understood.

19 Q. If at any time I ask you a  
 20 question that you don't understand,  
 21 please let me know and I'll rephrase.  
 22 If you do answer my question, I'm  
 23 going to assume that you understand  
 24 it.

Page 3

Page 5

1 THE COURT REPORTER: Usual  
 2 stipulations?

3 MR. SAUDER: Read and sign.

4 EXAMINATION

5 BY MR. BASSMAN:

6 Q. Good morning, Mr. Fink.

7 A. Good morning.

8 Q. My name is Barak Bassman.  
 9 I'm an attorney for the defendants in  
 10 this case. We met just a moment ago.  
 11 Before we begin, I want to just go  
 12 over a few quick ground rules that  
 13 will make today go more quickly and  
 14 more smoothly.

15 First, as you can see, the  
 16 court reporter is writing down  
 17 everything that we say. A written  
 18 record is being made of today's  
 19 proceedings.

20 In order for all your  
 21 answers to be recorded properly,  
 22 you're going to have to answer my  
 23 questions verbally. I know sometimes  
 24 when we talk in conversation, you

1 Is that okay?

2 A. That's fine.

3 Q. If at any time you need a  
 4 break, you need to use the rest room,  
 5 you need to stretch your legs, please  
 6 just let me know. This is not an  
 7 interrogation; you're not a prisoner.

8 Just let me know and I'll  
 9 try to wrap up my line of questioning  
 10 as soon as possible so we can take a  
 11 break.

12 A. That's fine.

13 Q. We're only here to find out  
 14 what you know. Obviously you don't  
 15 know everything under the sun,  
 16 neither do I, neither does anyone.  
 17 If you don't know the answer to  
 18 something I'm asking you, it's okay  
 19 to say I don't know. I'm sure both I  
 20 and your lawyer agree on the point  
 21 that we don't want you guessing or  
 22 speculating.

23 Is that okay?

24 A. Understood.

Page 6

Page 8

1 Q. There are a large number of  
2 different entities in this case.  
3 There are several defendants, some of  
4 who are formed by the mergers of  
5 other companies. For the sake of  
6 clarity, I want to let you know that  
7 when I use the term Conectiv, I'm  
8 going to be referring to every  
9 defendant in this case and all their  
10 predecessors including Atlantic City  
11 and DelMarVa.

12 So if I use the term  
13 Conectiv I mean everybody. If I want  
14 to ask you a question about a  
15 specific entity just alone by itself,  
16 I'll let you know.

17 A. Very good.

18 Q. Is there any reason, as you  
19 sit here today, you can't testify  
20 fully and truthfully?

21 A. None.

22 Q. Are you under any physical  
23 impairment, taking any medication  
24 today that could affect your memory

1 A. Approximately two hours.

2 Q. Do you recall what  
3 documents you reviewed at that  
4 meeting?

5 A. There was a host of  
6 documents there were reviewed.

7 Q. Do you remember what any of  
8 them were?

9 A. Some.

10 Q. What were they?

11 A. Specifically I remember a  
12 PowerPoint slide production.

13 Q. Anything else come to mind?

14 A. I saw what I believe were  
15 old company information sheets.

16 Q. Anything else?

17 A. I can't recall.

18 Q. Okay. Do you know Mr.  
19 Charles?

20 A. Yes, I do.

21 Q. Did you speak with Mr.  
22 Charles about today's deposition?

23 A. No, I did not.

24 Q. Do you know Mr. Ward?

Page 7

Page 9

1 or your ability to recall events?

2 A. None.

3 Q. What did you do to prepare  
4 for today's deposition?

5 A. Very little.

6 Q. Did you review any  
7 documents?

8 A. I reviewed documents with  
9 my attorney last week.

10 Q. Okay. And you met with  
11 your attorney once?

12 A. Physically, yes, face to  
13 face once last week.

14 Q. Have you discussed today's  
15 deposition with anyone other than  
16 your attorney?

17 A. No.

18 Q. And you said one meeting  
19 face to face. Did you have any phone  
20 conversations with your attorney to  
21 get ready for today's deposition?

22 A. No.

23 Q. And how long did the  
24 meeting last week last?

1 A. Yes, I do.

2 Q. Did you speak with him  
3 about today's deposition?

4 A. No, I did not.

5 Q. Do you know Mr. Troup?

6 A. No, I do not.

7 Q. When did you graduate from  
8 high school?

9 A. 1973. '2. 1972.

10 Q. You look like a 1973 grad.

11 What high school did you  
12 graduate from?

13 A. Holy Spirit.

14 Q. And where is that?

15 A. Absecon, New Jersey.

16 Q. Could you briefly describe  
17 your education after high school.

18 A. I have some courses at  
19 Atlantic Community College.

20 Q. Did you receive a degree?

21 A. No. I do not have an  
22 associate's degree.

23 Q. Do you remember what the  
24 courses were in at community college?

Page 10

Page 12

1 A. Just liberal arts.  
 2 Communications, algebra, introduction  
 3 to computers.  
 4 Q. General academic subjects?  
 5 A. That's correct.  
 6 Q. And when did you take those  
 7 courses?  
 8 A. 1991.  
 9 Q. Could you tell me what the  
 10 first job you've had after high  
 11 school was.  
 12 A. I'm not positive, but it  
 13 may have been at Lenox China.  
 14 Q. How long were you there?  
 15 A. Maybe a year.  
 16 Q. What were your  
 17 responsibilities at Lenox China?  
 18 A. Just laborers.  
 19 Q. And where do you go after  
 20 Lenox China?  
 21 A. The Navy.  
 22 Q. How long were you in the  
 23 Navy?  
 24 A. Two years.

1 Modern Gas?  
 2 A. I was a field helper.  
 3 Q. And then you were promoted  
 4 to district manager?  
 5 A. Throughout that time, yeah.  
 6 I had several different positions  
 7 throughout that time.  
 8 Q. Do you remember what they  
 9 were?  
 10 A. Went from being a field  
 11 helper to being a repair technician,  
 12 and I was supervising those  
 13 technicians and then I ultimately  
 14 became a district manager.  
 15 Q. What was the business of  
 16 Modern Gas?  
 17 A. It was a propane gas  
 18 company.  
 19 Q. During your time at Modern  
 20 Gas, were you a member of any union?  
 21 A. No, I was not.  
 22 Q. And you left Modern Gas and  
 23 went to Atlantic City Electric in  
 24 1987?

Page 11

Page 13

1 Q. Were you drafted into the  
 2 Navy or did you volunteer?  
 3 A. No. No. I was a  
 4 volunteer.  
 5 Q. And what did you do in the  
 6 Navy?  
 7 A. I was an aviation  
 8 electrician.  
 9 Q. When you left the Navy  
 10 where did you go?  
 11 A. I went to Modern Gas  
 12 Company.  
 13 Q. How long were you at Modern  
 14 Gas?  
 15 A. Until I was employed by  
 16 Atlantic City Electric.  
 17 Approximately ten years.  
 18 Q. Until about 1987?  
 19 A. That's correct.  
 20 Q. And what did you do at  
 21 Modern Gas?  
 22 A. Ultimately I was a district  
 23 manager.  
 24 Q. What did you start doing at

1 A. That's correct.  
 2 Q. I assume you've been at  
 3 Atlantic City Electric or its  
 4 successors ever since 1987.  
 5 A. Almost 20 years.  
 6 Q. Could you describe for me  
 7 what positions you've held at  
 8 Atlantic City and its successors?  
 9 A. Started off as a meter  
 10 reader. I transferred to be an  
 11 overhead line laborer. From there I  
 12 became a single-phase meter  
 13 technician. From there I was a  
 14 poly-phase meter technician.  
 15 Ultimately a meter repair specialist.  
 16 I was the test facility supervisor.  
 17 And ultimately I was a zone  
 18 supervisor, which is what I am  
 19 currently.  
 20 Q. And what do you do as a  
 21 zone supervisor?  
 22 A. I'm responsible for the  
 23 maintenance and upkeep of all the  
 24 billing meters in the system,

Page 14

Page 16

1 installation, removal.

2 Q. For a particular zone?

3 A. Well, there are zones --  
4 that's terminology that's pretty  
5 broad based. It really encompasses  
6 several districts which would be West  
7 Creek, Atlantic City, Pleasantville,  
8 Cape May, and a piece of Hammonton.

9 Approximately two years ago  
10 I took a two-week acting assignment  
11 to fill in for an opening in the test  
12 facility in Mays Landing as the  
13 supervisor along with my normal  
14 position.

15 Q. During your time at  
16 Atlantic City or its successors, were  
17 you ever a union member?

18 A. Yes, I was.

19 Q. When were you a union  
20 member?

21 A. Until I became the shop  
22 supervisor in '92.

23 Q. And the union you were a  
24 member of was Local 210 of the IBEW?

1 Q. Were you involved in member  
2 grievances when you were an acting  
3 shop steward?

4 A. Yes, I was.

5 Q. How were you involved?

6 A. A shop steward is the first  
7 line of representation for the local  
8 members.

9 Q. Were any of the grievances  
10 that you were involved in concerning  
11 pension benefits?

12 A. No. None.

13 Q. How many grievances were  
14 you involved in when you were the  
15 acting shop steward?

16 A. Maybe a dozen.

17 Q. Do you remember just  
18 generally what they were about?

19 A. Contractual violations for  
20 various things. Like what types of  
21 work were being done across  
22 department lines and things of that  
23 nature.

24 Q. Have you ever been a

Page 15

Page 17

1 A. That's correct.

2 Q. And IBEW is the  
3 International Brotherhood of  
4 Electrical Workers?

5 A. Yes, it is.

6 Q. Did you ever hold any  
7 positions in the local?

8 A. All of the positions I held  
9 prior to '92 were.

10 Q. Actually, my question was a  
11 little different. Were you ever an  
12 officer of the union?

13 A. I was an acting shop  
14 steward.

15 Q. When were you an acting  
16 shop steward?

17 A. For approximately a year  
18 and -- I want to say in approximately  
19 1990.

20 Q. What did you do as an  
21 acting shop steward for the union?

22 A. I was a union  
23 representative to all the personnel  
24 that were in the meter test facility.

1 plaintiff in a lawsuit before?

2 A. No.

3 Q. Ever been a defendant in a  
4 lawsuit before?

5 A. No.

6 Q. Did you yourself ever file  
7 a union grievance?

8 A. Yes.

9 Q. When was that?

10 A. 1989.

11 Q. And just to be clear, when  
12 you were a union member you filed one  
13 grievance only, right?

14 A. No. I filed a number of  
15 grievances.

16 Q. Filed a number, okay.  
17 That's what I was wondering about.

18 How many grievances did you  
19 file?

20 A. I can't recall. A  
21 reasonable amount. More -- more than  
22 half a dozen.

23 Q. More than ten?

24 A. Possibly.



Page 18

Page 20

1 Q. And do you remember when  
2 the first grievance was filed?  
3 A. Somewhere during the course  
4 of 1989. I can't recall the month.  
5 Possibly in around the May, June area  
6 possibly.  
7 Q. And did any of the  
8 grievances that you filed relate to  
9 pension benefits?  
10 A. No, they did not.  
11 Q. If you could just sort of  
12 describe for me generally the subject  
13 matter of the grievances that you  
14 filed.  
15 A. They tended to be around  
16 what I considered wrongful hiring,  
17 were being passed over for being  
18 hired in a specific position.  
19 Q. So these would be  
20 grievances over...?  
21 A. Hiring practice.  
22 Q. Okay. Were you complaining  
23 that the company didn't hire you for  
24 positions that you had applied for?

1 arbitrator was?  
2 A. No, I couldn't begin to  
3 recall.  
4 Q. Do you remember when the  
5 arbitration was conducted?  
6 A. It was approximately a year  
7 later before it came to fruition.  
8 Q. So around 1990, 1991?  
9 A. That's correct.  
10 Q. Now, you mentioned one  
11 arbitration that you won but you  
12 filed at least half a dozen  
13 grievances. Was this one arbitration  
14 to resolve all of your grievances or  
15 were there separate arbitrations for  
16 each grievance?  
17 A. It was to resolve a number  
18 of those grievances.  
19 Q. Have you ever filed an  
20 administrative complaint with the  
21 pension plan?  
22 A. No.  
23 Q. Have you ever been  
24 convicted of a crime?

Page 19

Page 21

1 A. That is correct.  
2 Q. Did you prevail in all of  
3 these grievances?  
4 A. Ultimately there was an  
5 arbitration that I won.  
6 Q. And you were promoted after  
7 the arbitration?  
8 A. It was offered to me.  
9 Q. Did you take it?  
10 A. No, I did not.  
11 Q. In the arbitration were you  
12 represented by an attorney?  
13 A. No.  
14 Q. Do you remember testifying  
15 in the arbitration?  
16 A. No. It was a union  
17 management arbitration and it's very  
18 rare that -- the individuals that are  
19 the grievants are probably rarely  
20 involved.  
21 Q. Did others provide  
22 testimony in the arbitration?  
23 A. Not to my knowledge.  
24 Q. Do you remember who the

1 A. No.  
2 Q. You testified earlier that  
3 you know Mr. Charles, right?  
4 A. Yes.  
5 Q. When did you meet him?  
6 A. I've known Mike Charles  
7 casually for maybe ten years.  
8 Q. How did you two meet?  
9 A. Just in the course of  
10 business, in the corporation.  
11 Q. Would you consider him a  
12 friend?  
13 A. I would consider him a  
14 coworker.  
15 Q. Ever seen him socially?  
16 A. Never.  
17 Q. And you also said that you  
18 knew Mr. Ward, right?  
19 A. That's correct.  
20 Q. How long have you known Mr.  
21 Ward?  
22 A. Since 1989.  
23 Q. And how did you two meet?  
24 A. He was in the meter

Page 22

Page 24

1 department when I came to the meter  
2 department.

3 Q. Would you consider him a  
4 friend?

5 A. He's a casual acquaintance.

6 Q. Ever socialize with him?

7 A. No, not outside company  
8 functions after hours.

9 Q. So something like a happy  
10 hour for employees one afternoon, you  
11 guys might see each other?

12 A. I don't drink.

13 Q. Okay. Company picnic.

14 A. That's a company function  
15 in my mind.

16 Q. But it's not as if you and  
17 Mr. Ward ever did anything like go to  
18 a ball game together on a weekend.

19 A. No. That's correct. We  
20 have not.

21 Q. Do you read any newspapers  
22 regularly?

23 A. Yes, I do.

24 Q. What do you read?

1 Q. Do you have Internet access  
2 in your home?

3 A. Yes, I do.

4 Q. When did you get Internet  
5 access at home?

6 A. 1997.

7 Q. Do you research news items  
8 on the Internet?

9 A. Outside of sporting events,  
10 probably very rarely.

11 Q. Ever research pension  
12 issues on the web?

13 A. No.

14 Q. Do you have a home e-mail  
15 account?

16 A. Yes.

17 Q. What is your current home  
18 e-mail account?

19 A. Jifink@comcast.net.

20 Q. And how long --

21 MR. SAUDER: I'm sorry.

22 Just if we could mark that portion

23 confidential of the transcript and

24 also same goes with regard to

Page 23

Page 25

1 A. Philadelphia Daily News and  
2 the Atlantic City Press.

3 Q. Are you a subscriber to  
4 either newspaper?

5 A. The Atlantic City Press.

6 Q. Do you read it every day?

7 A. I try.

8 Q. And how long have you been  
9 a daily reader of the Atlantic City  
10 Press?

11 A. 30 years.

12 Q. Do you subscribe to any  
13 magazines?

14 A. No, I do not.

15 Q. Do you belong to any  
16 organizations?

17 A. No, I don't.

18 Q. Have you ever belonged to  
19 any organizations, leaving aside the  
20 union?

21 A. No. I haven't.

22 Q. Have you ever donated any  
23 money to any organizations?

24 A. Only to the United Way.

1 yesterday.

2 MR. BASSMAN: Sure.

3 MR. SAUDER: Okay.

4 BY MR. BASSMAN:

5 Q. How long have you had the  
6 personal e-mail account at

7 Jifink@comcast.net?

8 A. Several years. I can't --  
9 whenever I went to cable access.

10 Q. So at least two years?

11 A. Two or three.

12 Q. Did you have a home e-mail  
13 address before that?

14 A. No.

15 Q. Have you ever sent or  
16 received e-mails in your home e-mail

17 address about this lawsuit?

18 A. The only e-mails I've ever  
19 received about this lawsuit are from

20 my attorney.

21 Q. Have you ever sent or  
22 received any e-mails on your home

23 e-mail account about any of

24 Conectiv's pension plans?

Page 26

Page 28

1 A. Never.

2 Q. Have you ever communicated  
3 through your home e-mail, either  
4 sending or receiving, with either Mr.  
5 Charles or Mr. Ward?

6 A. No.

7 Q. When you started at  
8 Atlantic City in 1987, what was your  
9 understanding as to your pension  
10 plan?

11 A. With respect to what aspect  
12 of it?

13 Q. Well, you understood that  
14 you had a pension plan when you  
15 started.

16 A. That's correct.

17 Q. What was your understanding  
18 as to how your pension would be  
19 computed when you started in 1987?

20 A. I had none.

21 Q. Did you receive any  
22 documents about it?

23 A. No.

24 Q. Did you ask about it?

1 the ACE plan?

2 MR. BASSMAN: The ACE plan  
3 that was in effect before January 1,  
4 1999.

5 MR. SAUDER: Okay.

6 THE WITNESS: Probably  
7 somewhere in the early '90s I was  
8 curious about it.

9 BY MR. BASSMAN:

10 Q. And what did you do in the  
11 early '90s to find out more?

12 A. I asked questions of the HR  
13 representative.

14 Q. You said early '90s. I  
15 just want to be clear. Do you recall  
16 if when you started asking the HR  
17 department about the pension plan,  
18 was that before or after you stopped  
19 being a union member?

20 A. It was after.

21 Q. So you were in management  
22 at this point?

23 A. Yes.

24 Q. Was the fact that you

Page 27

Page 29

1 A. No.

2 Q. So when you started at  
3 Atlantic City in 1987, you knew there  
4 was a pension plan, but you really  
5 didn't know anything about it?

6 A. They give you a handbook,  
7 an employee handbook, that gave a  
8 very high level -- I gave it like the  
9 once-over I would say. It was very  
10 high level explaining that you --  
11 that there was a company retirement  
12 plan, and it was always very  
13 difficult it seemed to me to find out  
14 any information in depth.

15 Q. What efforts did you take  
16 to try to find out any information in  
17 depth?

18 A. When?

19 Q. Let's start in 1987.

20 A. In 1987, none.

21 Q. When did you first  
22 undertake any efforts to find out  
23 about the pension plan?

24 MR. SAUDER: With regard to

1 transitioned to management one of the  
2 reasons you became more interested in  
3 your pension plan?

4 A. Yes.

5 Q. Do you remember who you  
6 spoke to in HR?

7 A. No, I don't.

8 Q. And do you remember what  
9 questions you asked back in this  
10 early '90s period?

11 A. I'm just speculating, but I  
12 believe it was about what age could  
13 you retire.

14 Q. And were your questions  
15 answered?

16 A. To the best of my knowledge  
17 at that time. Best I can recall.

18 Q. Were you asking about early  
19 retirement benefits then?

20 A. I was asking what was the  
21 earliest we could retire, I believe.

22 Q. And what do you remember  
23 the answer being in the early '90s?

24 A. If I'm not mistaken, it was

Page 30

Page 32

1 55 years of age.

2 Q. When you spoke to the HR  
3 rep in the early '90s at Atlantic  
4 City, did you ask for copies of any  
5 documents relating to the pension  
6 plan?

7 A. No, I did not.

8 Q. Did the HR rep offer to  
9 provide you any documents about the  
10 pension plan?

11 A. No, he did not.

12 Q. Aside from the employee  
13 handbook that you described earlier,  
14 did you ever receive any documents  
15 about the Atlantic City plan before  
16 January 1999?

17 A. No.

18 Q. You testified that HR told  
19 you that you could retire at age 55.  
20 In the early '90s they told you that.  
21 Did you have any understanding at  
22 that time as to how the amount of  
23 pension that you would be paid would  
24 be calculated?

1 A. Yes.

2 Q. Before January 1, 1999, did  
3 you ever complain to anyone about the  
4 Atlantic City pension plan?

5 A. No.

6 Q. Were you happy with the  
7 plan from before January 1, 1999?

8 MR. SAUDER: Objection to  
9 the form. Answer if you understand  
10 the question.

11 THE WITNESS: What do you  
12 mean was I happy with it?

13 BY MR. BASSMAN:

14 Q. I'll rephrase. Before  
15 January 1, 1999, so before the cash  
16 balance conversion that we'll talk  
17 about in a bit, at any time did you  
18 personally wish that Atlantic City or  
19 its successors changed the terms of  
20 your pension plan?

21 A. No.

22 Q. Now, in January 1, 1999,  
23 the Conectiv pension plan converted  
24 to a cash balance plan, right?

Page 31

Page 33

1 A. There was a high level  
2 explanation in that handbook that  
3 surrounded your average salary over  
4 the course of your career. Dollars  
5 averaged out with a multiplier for  
6 the length of service. Other than  
7 those, I can't remember any other  
8 more specifics.

9 Q. But your understanding was  
10 in the early '90s that the amount of  
11 pension that you could collect would  
12 be based in some way on a salary you  
13 had earned as an employee at Atlantic  
14 City and the length of service,  
15 right?

16 A. Yes.

17 Q. And that the higher your  
18 salary was and the longer your  
19 service, the higher your benefit  
20 would be?

21 A. At that time, yes.

22 Q. Again, talking about just  
23 what you understood in the early  
24 '90s.

1 A. Correct.

2 Q. When did you first become  
3 suspicious that your rights were  
4 being violated by the cash balance  
5 plan?

6 MR. SAUDER: Objection to  
7 the form. You can answer.

8 THE WITNESS: I became  
9 suspicious of how the plan would  
10 ultimately suit me around 2004 maybe.  
11 BY MR. BASSMAN:

12 Q. What happened in 2004 that  
13 aroused your suspicion?

14 A. I guess it was the number  
15 of employees that were grandfathered  
16 under the old plan had pretty much  
17 started to leave and then there was a  
18 group of individuals that were  
19 leaving under the new plan.

20 And there seemed to be a  
21 disparity in the dollar values that  
22 were ultimately coming out of that.

23 Q. And I assume the disparity  
24 that you saw was that employees

Page 34

Page 36

1 retiring under the new cash balance  
2 plan were receiving lower payments  
3 when they left than employees who  
4 were grandfathered?

5 A. That is correct.

6 Q. How did you find out the  
7 amount of money that these retiring  
8 employees were receiving?

9 A. There was some complaining  
10 more or less from some of the people  
11 that were separating under cash  
12 balance.

13 Q. Do you remember who was  
14 complaining?

15 A. Not off the top of my head.

16 Q. Were any of these people  
17 complaining directly to you  
18 personally?

19 A. Some were -- some  
20 statements were made in passing as  
21 you would see people in the hallways  
22 and have brief conversations saying,  
23 you know, wishing them well in their  
24 new endeavors and certain topics

1 A. Correct.

2 Q. And by grandfathered, just  
3 to clear up the terms, I assume  
4 you're meaning employees who had the  
5 option to take benefits under the old  
6 Atlantic City plan and not the cash  
7 balance plan if they chose?

8 A. Yes.

9 Q. And you were not  
10 grandfathered, right?

11 A. No, I was not.

12 Q. How old are you, Mr. Fink?

13 A. Currently?

14 Q. Yes. Today.

15 A. I'm currently 52.

16 Q. After you became suspicious  
17 that your rights maybe were violated  
18 by the cash balance plan, what  
19 actions did you take?

20 A. I think that's when I  
21 possibly started looking at the  
22 Vanguard site a little closer.

23 Q. What in particular were you  
24 looking at on the Vanguard site?

Page 35

Page 37

1 would come up.

2 Sometimes it would be I  
3 wish I was leaving, you know, or I  
4 was grandfathered or, you know,  
5 things of that nature. They felt  
6 they would have made out better.

7 Q. Did any of these departing  
8 employees in 2004 provide you with  
9 dollar figures of the amount of their  
10 benefits?

11 A. I'm sure there was one or  
12 two, but I couldn't begin to tell you  
13 what those dollar figures were. At  
14 that time it didn't -- didn't feel it  
15 was any of my personal business what,  
16 you know, their dollar value was. I  
17 just had questions about my own at  
18 that particular point.

19 Q. But you just had the  
20 general sense from conversations  
21 around the office that benefits were  
22 higher for employees who were  
23 grandfathered than employees who were  
24 not.

1 A. The portion that contains  
2 the retirement dollars.

3 Q. Is that the Pension  
4 Estimator?

5 A. Yes, it is.

6 Q. Had you used the Pension  
7 Estimator before 2004?

8 A. No. I'm not sure it  
9 existed before 2004. I don't really  
10 know if it did or not, but, no, I did  
11 not.

12 Q. Had you looked at the  
13 Vanguard website before 2004?

14 A. Yes, because it's also tied  
15 to my 401(k).

16 Q. Had you ever researched  
17 your cash balance benefits under the  
18 Vanguard website before 2004?

19 A. I attempted to, but early  
20 in that process information was not  
21 available on the website, had not  
22 been put up on the website.

23 Q. And do you remember when  
24 the early unsuccessful attempts were?

Page 38

Page 40

1 A. In the area that we're  
2 talking about.

3 Q. '98, '99, around that time  
4 frame?

5 A. No. No. I'm talking about  
6 in '04.

7 Q. Oh, in '04. So the first  
8 time you tried to research your cash  
9 balance benefits on the Vanguard  
10 website was in 2004?

11 A. I believe that's correct,  
12 yes.

13 Q. And what was the problem  
14 that you encountered when you first  
15 tried to look up your benefits on the  
16 website?

17 A. It gave me my lump sum but  
18 I wanted information about how  
19 things -- how the plan operated which  
20 was not available.

21 Q. What steps did you take to  
22 find out how the plan operated?

23 A. I believe when I spoke to  
24 Vanguard about various things, about

1 likely spoke face to face with the  
2 representative.

3 Q. There's an HR rep in your  
4 facility where you work?

5 A. In that region, yes. I  
6 come in and out of that facility,  
7 yes, on a daily basis.

8 Q. Do you remember at all what  
9 you said to the HR representative?

10 A. I imagine it was very high  
11 level. Like is there any  
12 documentation, you know, type of  
13 thing.

14 Q. Do you remember any  
15 response?

16 A. There is somewhere, but  
17 it's not, you know, I don't have it,  
18 you know, right in my fingertips type  
19 of thing. I'll see if I can, you  
20 know, conjure up something for you.

21 Q. Was anything ever conjured  
22 up for you?

23 A. No.

24 Q. Besides the meeting with

Page 39

Page 41

1 matching 401(k) moneys and pension,  
2 it was a dial-in type of phone call,  
3 and that's where I got the  
4 information that it was not available  
5 on the website at that time.

6 Q. Do you remember who you  
7 spoke to at Vanguard?

8 A. No.

9 Q. This is just like a 1-800  
10 number you called?

11 A. Yes.

12 Q. This was a customer service  
13 rep who answered?

14 A. No.

15 Q. After you spoke to the  
16 customer service rep at Vanguard, did  
17 you make any other efforts to find  
18 out how the cash balance plan works?

19 A. I believe I may have  
20 possibly asked HR.

21 Q. When you say "asked HR,"  
22 would you have sent them an e-mail or  
23 called them on the phone?

24 A. I believe I more than

1 the Conectiv HR rep and the phone  
2 call with the representative from  
3 Vanguard, did you take any other  
4 actions to investigate how the cash  
5 balance plan works?

6 A. Nothing outside of  
7 occasionally looking at that Pension  
8 Estimator. I believe I may have  
9 possibly, to the best of my  
10 recollection, asked another, you  
11 know, 1-800 phone call about a 401(k)  
12 issue and tacked that on and said,  
13 hey, is that up and functioning type  
14 of thing at some point later.

15 Q. Does Conectiv have an  
16 intranet that you can access as an  
17 employee?

18 A. Yes.

19 Q. Did you ever attempt to  
20 research issues about the cash  
21 balance plan on the Conectiv  
22 intranet?

23 A. That's where I made all my  
24 contacts.



Page 42

Page 44

1 Q. Okay.

2 A. There's a link from our  
3 intranet.

4 Q. To the Vanguard site?

5 A. Yes.

6 Q. Okay. Have you ever heard  
7 of something called the Summary Plan  
8 Description?

9 A. I can't recall, that  
10 terminology anyway.

11 Q. After you became suspicious  
12 that the cash balance plan may be  
13 violating your rights --

14 MR. SAUDER: Objection to  
15 that.

16 BY MR. BASSMAN:

17 Q. -- did you speak with any  
18 coworkers at Conectiv about the plan?

19 MR. SAUDER: Objection. I  
20 think it mischaracterizes his  
21 testimony.

22 MR. BASSMAN: You can  
23 answer.

24 MR. SAUDER: You can answer

1 people who have separated, but I  
2 can't swear to the fact that we had a  
3 direct conversation about -- about  
4 the numbers of their separation or  
5 their potential separations.

6 Q. Just, actually, to go back  
7 a second, you testified earlier that  
8 you spoke to departing employees when  
9 they retired about their pension  
10 benefits?

11 A. Uh-huh.

12 Q. Is that a yes?

13 A. Yes.

14 Q. Just remember you have to  
15 answer verbally.

16 A. Yes.

17 Q. Were any of those retiring  
18 employees 65 years old or older?

19 A. I don't believe so. I  
20 believe they were all in their  
21 mid-fifties.

22 Q. So they were all, at least  
23 among the grandfathered employees,  
24 they were taking advantage of the

Page 43

Page 45

1 if you understand the question or if  
2 you agree with the characterization.

3 THE WITNESS: Repeat the  
4 question.

5 BY MR. BASSMAN:

6 Q. Sure. After you became  
7 suspicious that your rights may be  
8 violated by the cash balance plan in  
9 2004, did you share your concerns  
10 with any coworkers at Conectiv?

11 MR. SAUDER: Same  
12 objection.

13 THE WITNESS: There were a  
14 number of us sharing those concerns  
15 back and forth.

16 BY MR. BASSMAN:

17 Q. Do you remember who those  
18 employees were?

19 A. There was several employees  
20 that were management employees.

21 Q. What were their names?

22 A. One would be Mr. Ward.

23 Q. Who else?

24 A. I can think of a host of

1 option under the old Atlantic City  
2 plan to retire early at age 55?

3 A. Or thereabouts. 55, 56,  
4 57. I believe there was a ten-year  
5 window from merger that they could  
6 exercise that option.

7 Q. Besides Mr. Ward, can you  
8 remember the name of any other  
9 individual with whom you shared your  
10 concerns about the cash balance plan?

11 A. That I shared my concerns?

12 Q. Yes.

13 A. In any depth no one other  
14 than Mr. Ward.

15 Q. Did anybody share their  
16 concerns about the cash balance plan  
17 with you?

18 A. There was a lot of talk  
19 amongst management employees that the  
20 cash balance plan was not as  
21 lucrative as the Heritage plan.

22 Q. And by Heritage plan you  
23 mean the previous Atlantic City plan?

24 A. That is correct. It was

Page 46

Page 48

1 casual dialogue in an office.  
 2 Q. Do you believe personally  
 3 today that the cash balance plan is  
 4 not as lucrative as the original ACE  
 5 plan?  
 6 A. Yes.  
 7 Q. Why?  
 8 A. Just by looking at that  
 9 Pension Estimator, knowing my current  
 10 age, my current length of service,  
 11 and seeing what people are leaving  
 12 now as that window for grandfathering  
 13 is closing, looking at their numbers.  
 14 Q. So some departing employees  
 15 have shared their numbers with you?  
 16 A. That's correct.  
 17 Q. Do you remember who they  
 18 are?  
 19 A. Yes.  
 20 Q. Who?  
 21 A. Scott Baker, for one.  
 22 Q. Who else?  
 23 A. Charles Weeks.  
 24 Q. How do you spell Weeks?

1 Weeks are grandfathered?  
 2 A. Yes, they are.  
 3 Q. Now, when you say -- you  
 4 used the term numbers, that you  
 5 looked at their numbers. I assume  
 6 that's the lump sum payment they'd be  
 7 entitled to upon retirement?  
 8 A. That's correct.  
 9 Q. Would it be your intention  
 10 when you retire to take your  
 11 retirement benefits in a lump sum  
 12 payment?  
 13 A. More than likely.  
 14 Q. Do you know any Conectiv  
 15 employee who was offered the option  
 16 of an immediate lump sum payment when  
 17 they retired who declined it?  
 18 A. I can't say.  
 19 Q. Can you think of any?  
 20 A. No.  
 21 Q. So to the best of your  
 22 knowledge, everyone that you know  
 23 who's retired has taken the option to  
 24 receive their benefits in a lump sum?

Page 47

Page 49

1 A. W-E-E-K-S.  
 2 Q. Okay. Like multiple weeks?  
 3 A. Yes.  
 4 Q. Anybody else?  
 5 A. Just them specifically  
 6 because of their -- they are my  
 7 contemporaries in the same building  
 8 performing the same function and are  
 9 capable in age. Slightly older.  
 10 Q. Do you know how old Mr.  
 11 Baker was when he retired?  
 12 A. These gentlemen have not  
 13 retired. They are -- they are  
 14 currently positioning to retire.  
 15 Q. What do you mean by  
 16 "positioning to retire"?  
 17 A. They have I presume called  
 18 an actuary to get those figures.  
 19 Q. And how old is Mr. Baker  
 20 today, if you know?  
 21 A. I want to say 54.  
 22 Q. And Mr. Weeks?  
 23 A. 54.  
 24 Q. And both Mr. Baker and Mr.

1 A. To the best of my  
 2 knowledge.  
 3 Q. Let's take a look at  
 4 Pension Estimator.  
 5 MR. BASSMAN: I think we're  
 6 up to 31.  
 7 (Exhibit D-31 was marked  
 8 for identification.)  
 9 BY MR. BASSMAN:  
 10 Q. Mr. Fink, you've been  
 11 handed a document that's been marked  
 12 Defendant's Exhibit 31. If you could  
 13 just take a moment to look it over.  
 14 Looks like I gave you the  
 15 wrong one. This wasn't the one I  
 16 meant to give you. Pass that back to  
 17 me. We'll keep this and use it in a  
 18 little bit.  
 19 (Exhibit D-32 was marked  
 20 for identification.)  
 21 BY MR. BASSMAN:  
 22 Q. Mr. Fink, you've been now  
 23 presented with a document that was  
 24 marked Defendant's Exhibit 32. If

Page 50

Page 52

1 you could take a moment to look it  
2 over, please.

3 MR. SAUDER: I'll ask, as  
4 we discussed yesterday, that this  
5 portion of the transcript be marked  
6 confidential.

7 MR. BASSMAN: Okay.

8 BY MR. BASSMAN:

9 Q. Have you had an opportunity  
10 to review Defendant's 32?

11 A. Yes.

12 Q. And is Defendant's 32 a  
13 copy of the Pension Estimator  
14 calculations that you ran on the  
15 Vanguard site?

16 A. Yes.

17 Q. Are there any Pension  
18 Estimator calculations that you made  
19 on the Vanguard site that are missing  
20 from Defendant's Exhibit 32?

21 A. No.

22 Q. So this appears complete to  
23 you?

24 A. Yes.

1 A. I don't recall with

2 absolute certainty, but I don't think  
3 there was very much.

4 Q. And moving up on the first  
5 page of Defendant's 32 you ran two  
6 calculations on April 1, 2005.

7 A. Yes.

8 Q. Do you recall why you were  
9 running calculations on that date?

10 A. More than likely it  
11 surrounded other individuals  
12 separating and casual conversation  
13 about dollar values of lump sums.

14 Q. And those conversations  
15 would have prompted your curiosity to  
16 go back on to the Vanguard site and  
17 run some numbers?

18 A. Yes.

19 Q. Moving ahead, you also made  
20 some calculations June 27 of 2005.  
21 Do you see that?

22 A. Yes.

23 Q. Do you recall why you were  
24 making Pension Estimator calculations

Page 51

Page 53

1 Q. Looking at the first page  
2 of Defendant's 32, on the bottom it  
3 says the first estimate they created  
4 was June 15, 2004.

5 A. Yes.

6 MR. SAUDER: For the  
7 record, this is JIF 18.

8 BY MR. BASSMAN:

9 Q. Does seeing that date  
10 created 6/15/2004 entry refresh your  
11 recollection as to when you started  
12 having conversations with departing  
13 employees about the amount of the  
14 cash balance benefits versus benefits  
15 under the old plan?

16 A. More or less.

17 Q. Were those conversations  
18 around June of 2004?

19 A. To the best of my  
20 recollection.

21 Q. Do you remember there being  
22 much lag time between having those  
23 conversations and you starting to run  
24 numbers on the Pension Estimator?

1 on that date?

2 A. More than likely for the  
3 same reason.

4 Q. And moving up, October 31,  
5 2006, do you recall why you were  
6 making calculations that day?

7 A. Probably verifying what the  
8 dollar values looked like.

9 Q. And why would you be  
10 verifying what the dollar values  
11 looked like on October 31 of 2006?

12 A. For the same purpose, to  
13 see if the -- with individuals over  
14 the last ten years have separated not  
15 in any -- there was no mass exodus  
16 after the initial merger. They  
17 trickled out over that course of  
18 time, and it very well could have  
19 been I was just curious as to what  
20 the dollar value looked like at that  
21 time.

22 Q. Same question for January  
23 8th, 2007.

24 A. That was just curiosity.

Page 54

Page 56

1 Q. When you calculate  
2 potential benefits under the Pension  
3 Estimator, could you tell me what  
4 information you enter into the  
5 system.

6 A. It asks you things like  
7 spousal information, projected  
8 retirement dates, things of that  
9 nature.

10 Q. Does it ask you to put in a  
11 date when you'll stop working at  
12 Conectiv?

13 A. Yes, it does.

14 Q. And Vanguard also asks you  
15 to put in a date when you'll start  
16 getting your pension payments, right?

17 A. Both.

18 Q. And they don't have to be  
19 the same date?

20 A. I believe that's correct,  
21 yes.

22 Q. Does the Pension Estimator  
23 allow you to enter information about  
24 what you think your salary increases

1 A. No.

2 Q. Any idea what the Status  
3 column refers to?

4 A. No.

5 Q. You can put that document  
6 aside.

7 When was the first time  
8 that you spoke to a lawyer about your  
9 concerns about the cash balance plan?  
10 I just want to caution you, I only  
11 want a date or approximate date in  
12 response to my question.

13 A. First conversation I ever  
14 had with a lawyer would be with Mr.  
15 Malone.

16 Q. When was that?

17 A. I want to say sometime  
18 maybe in the third or fourth quarter  
19 of '05.

20 Q. And did you call Mr. Malone  
21 or did he call you?

22 A. No. I called him.

23 Q. What prompted you to call  
24 Mr. Malone?

Page 55

Page 57

1 might be in the future?

2 A. I believe I saw that on  
3 1/8/07 that it does.

4 Q. And when you ran any of  
5 these calculations, did you put in  
6 any projected salary increases?

7 A. If I did, it was more than  
8 likely whatever the contractual  
9 arrangement with the local union is,  
10 because our salary structure is based  
11 on a certain gap between that.

12 Q. And if you look at, on the  
13 first page of Defendant's 32, on the  
14 far right-hand column you see Status.

15 A. Uh-huh.

16 Q. Is that a yes?

17 A. Yes.

18 Q. Just remember --

19 A. Yes.

20 Q. -- to keep answering  
21 verbally.

22 Do you recall ever seeing  
23 anything written in the Status  
24 column?

1 A. A conversation with a  
2 coworker.

3 Q. Which coworker?

4 A. Mr. Ward.

5 Q. Do you remember when that  
6 conversation was?

7 A. It would be in close  
8 proximity to that time frame.

9 Q. So just before you called  
10 Mr. Malone, you had had a  
11 conversation with Mr. Ward?

12 A. Yes.

13 Q. And what do you recall Mr.  
14 Ward saying to you in this  
15 conversation?

16 A. I can't remember the -- the  
17 exact dialogue, but the conversation  
18 surrounded the cash balance plan.

19 Q. Was this conversation in  
20 person or over the phone?

21 A. In person.

22 Q. And who initiated it?

23 A. I'm not sure. We work in  
24 the exact same area.

Page 58

Page 60

1 Q. Do you remember the general  
2 substance of what Mr. Ward said to  
3 you?

4 A. It was about the cash  
5 balance plan.

6 Q. Do you remember what he  
7 said about the cash balance plan?

8 A. We were just questioning  
9 the validity of it versus the  
10 heritage plan.

11 Q. Why were you questioning  
12 the validity of the cash balance  
13 plan?

14 A. About dollar amounts.

15 Q. So when you say validity,  
16 you were questioning which one was  
17 higher or lower, the cash balance  
18 plan or the old ACE plan?

19 A. Yes.

20 Q. Were either you or Mr. Ward  
21 in this conversation questioning the  
22 legal validity of the cash balance  
23 plan?

24 A. No.

1 possibility of a class action  
2 lawsuit?

3 A. No.

4 Q. Did Mr. Ward tell you where  
5 he got Mr. Malone's name from?

6 A. I don't recall.

7 Q. Did you ask?

8 A. No.

9 Q. Before calling Mr. Malone,  
10 did you do any research about Mr.  
11 Malone or his law firm?

12 A. No.

13 Q. Have you discussed this  
14 lawsuit with anyone other than your  
15 attorneys?

16 A. No. Not really, no.

17 Q. Is it no or is it not  
18 really?

19 A. No.

20 Q. When I say discussions with  
21 attorneys, just to be clear, if you  
22 and Mr. Ward and Mr. Charles all  
23 together were meeting with your  
24 attorneys, I'm considering that a

Page 59

Page 61

1 Q. Did Mr. Malone's name come  
2 up in this conversation?

3 A. Yes.

4 Q. And who brought it up?

5 A. Mr. Ward.

6 Q. And what did Mr. Ward say  
7 to you about Mr. Malone?

8 A. I actually asked Mr. Ward  
9 about Mr. Malone, about attorneys.

10 Q. Okay. So you asked Mr.  
11 Ward if there was an attorney that  
12 you could call to discuss your  
13 concerns about the cash balance plan?

14 A. That's correct.

15 Q. And he gave you Mr.  
16 Malone's name?

17 A. That's correct.

18 Q. Did he tell you if he had  
19 already spoken to Mr. Malone?

20 A. I don't recall if he said  
21 he had spoken to him or he would  
22 speak to him at that time.

23 Q. In this conversation, did  
24 Mr. Ward discuss with you the

1 discussion with your attorneys.

2 A. Yes.

3 Q. Is that what you  
4 understood?

5 A. Yes.

6 Q. Okay. We've been going  
7 just a little over an hour. So I  
8 just wanted to see if you needed a  
9 break or if you wanted to keep  
10 rolling.

11 A. No.

12 Q. Okay. Again, if you feel  
13 you need a break at any point, you  
14 know, just pipe up.

15 Let me take a step back.

16 What is your understanding as to how  
17 benefits are calculated under the  
18 cash balance plan?

19 A. I don't have a good  
20 understanding.

21 Q. Tell me what your  
22 understanding is, you know, today.  
23 Knowing that you're not an expert in  
24 this.

Page 62

Page 64

1 MR. SAUDER: And, again, I  
2 would just caution the witness to not  
3 discuss anything that you discussed  
4 with counsel with regard to what your  
5 understanding is.

6 If you have any  
7 understanding independent of any  
8 conversations that you've had with  
9 your attorneys, that's what you can  
10 answer.

11 THE WITNESS: I just don't  
12 have a good understanding of it to be  
13 very candid.

14 BY MR. BASSMAN:

15 Q. Is it your testimony that  
16 you have no understanding as to how  
17 benefits are calculated under the  
18 cash balance plan outside of  
19 discussions with your attorneys?

20 A. Yes.

21 Q. Have you ever heard the  
22 term, again, outside of discussions  
23 with your attorneys, have you ever  
24 heard the term pay credit rate?

1 A. Yes.

2 Q. I'd like to start with the  
3 first page titled Conectiv's Cash  
4 Balance Plan. Do you see that?

5 A. Yes.

6 Q. And it says, the second  
7 sentence, it says, This statement  
8 shows the opening cash balance  
9 account on January 1, 1999 for Joseph  
10 Fink.

11 Did you receive the first  
12 page of Defendant's Exhibit 31 in  
13 1999?

14 A. Yes.

15 Q. Do you recall approximately  
16 when in 1999 you received it?

17 A. Not really.

18 Q. Do you see there's a  
19 reference to your opening cash  
20 balance 66,851.03?

21 A. Yes.

22 Q. Do you have any  
23 understanding as to what that dollar  
24 figure represents?

Page 63

Page 65

1 A. No.

2 Q. Ever heard the term  
3 interest credit?

4 A. I may have heard that term.

5 Q. Do you remember what  
6 context you may have heard the term?

7 A. Maybe in a document or on  
8 an annual statement possibly.

9 Q. Ever heard the term  
10 transition credit? Again, outside of  
11 discussions with your lawyers.

12 A. I've heard the term, but  
13 I'm not necessarily absolutely  
14 familiar as to what it means.

15 Q. Let's take a look at  
16 Defendant's Exhibit 31. Have you had  
17 an opportunity to look over  
18 Defendant's Exhibit 31?

19 A. Yes.

20 Q. And is Defendant's Exhibit  
21 31 a series of statements about the  
22 value of your cash balance account  
23 that you received from Conectiv and  
24 Vanguard?

1 A. Outside of my opening cash  
2 balance?

3 Q. Yeah. How that dollar  
4 figure was computed.

5 A. No.

6 Q. If you look just to the  
7 right of the dollar figure you see a  
8 little text.

9 A. Yes.

10 Q. And you see one of the  
11 sentences there is, Your account  
12 balance was determined to be the  
13 present value of your accrued benefit  
14 as of December 31, 1999 determined  
15 using actuarial tables to reflect  
16 life expectancy and the time value of  
17 money.

18 Do you see that language?

19 A. Yes.

20 Q. Based on that sentence, do  
21 you have any understanding as to how  
22 this opening cash balance dollar  
23 figure was computed?

24 A. Vaguely.



Page 66

Page 68

1 Q. What's your vague  
2 understanding?  
3 A. I don't know where the --  
4 the numbers themselves actually came  
5 from. Where is the -- I mean what's  
6 the actuarial tables? I don't know  
7 what the actuarial -- what tables  
8 they're referring to. I've never  
9 seen these tables.  
10 Q. But is it your  
11 understanding that the actuarial  
12 tables refer to your accrued benefit  
13 under the old Atlantic City plan?  
14 A. I would believe so.  
15 Q. So that this opening cash  
16 balance of 66,851.03 relates in some  
17 way to the benefit that you accrued  
18 under the old Atlantic City plan?  
19 A. Yes.  
20 Q. Is it your understanding  
21 that this is an attempt to give a  
22 lump sum value as of January 1999,  
23 January 1, 1999, as the benefits you  
24 had accrued under the old Atlantic

1 Balance Account?  
2 A. Yes.  
3 Q. And there's Opening  
4 Balance?  
5 A. Yes.  
6 Q. And opening balance is that  
7 same \$66,851.03 number?  
8 A. Yes, it is.  
9 Q. And underneath opening  
10 balance there's Employer Contribution  
11 Credit. Do you see that?  
12 A. Yes, I do.  
13 Q. Do you have any  
14 understanding as to what employer  
15 contribution credit means?  
16 A. I speculate that it would  
17 be what the employer has paid into  
18 this fund.  
19 Q. If you look down -- see,  
20 there's some text under Your Cash  
21 Balance Account further down on the  
22 page?  
23 If you look at the second  
24 paragraph you see it says, The

Page 67

Page 69

1 City plan?  
2 A. Yes.  
3 Q. By the way, in any of the  
4 documents in Defendant's Exhibit 31,  
5 are you aware of any factual  
6 misstatements or misrepresentations?  
7 A. No.  
8 Q. If you go to the second  
9 page of D-31. The document Bates  
10 number -- and Bates numbers are those  
11 little numbers on the right-hand  
12 corner of the page that lawyers stick  
13 on. You'll see that's there's a JIF  
14 002.  
15 A. Yes.  
16 Q. Are the documents that are  
17 Bates numbered JIF 002 and 003 your  
18 Vanguard statement of your cash  
19 balance benefits that were earned in  
20 1999?  
21 A. Yes.  
22 Q. I'd like to take a look  
23 through the statement with you. You  
24 see under the heading Your Cash

1 employer contribution credit shown  
2 above is based on your age as of  
3 12/31/99, and then there's a  
4 parenthesis that says i.e., you know,  
5 five percent pay credit for under age  
6 50 and so on?  
7 A. Yes.  
8 Q. And does that paragraph  
9 help you to understand what the term  
10 employer contribution credit means?  
11 A. Yes.  
12 Q. What do you think it means?  
13 A. It's in effect what I  
14 previously stated, that it's the  
15 employer's contribution based on  
16 apparently age and salary structure.  
17 Q. Right. So that each year  
18 Conectiv takes a certain percentage  
19 of your salary and puts that in as  
20 the employer contribution credit into  
21 your cash balance account, right?  
22 A. Yes.  
23 Q. And if you look at the  
24 employer contribution credit

Page 70

Page 72

1 paragraph that we were just focusing  
2 on, is it correct that the pay credit  
3 rate increases as you age?

4 A. Yes, it does.

5 Q. So Conectiv is putting a  
6 higher percentage of salary for older  
7 workers than younger workers into  
8 cash balance accounts, right?

9 A. I would imagine it would  
10 also be tied to salary structure.

11 Q. Right.

12 A. Yes.

13 Q. But the percentage of the  
14 salary that's being taken?

15 A. On age, yes. Percentage  
16 does elevate with age.

17 Q. Let's go back up to the box  
18 with the numbers. And underneath  
19 Employer Contribution Credit you see  
20 an entry that says Interest Credit.

21 A. Yes.

22 Q. What is your understanding  
23 of what interest credit refers to?

24 A. I'm reading that off of

1 little box with the numbers again,  
2 you see there's transition credit.

3 A. Yes.

4 Q. Okay. What is your  
5 understanding of transition credit?  
6 And, again, feel free to look at the  
7 paragraph down here that discusses  
8 transition credits.

9 A. It's based on service time,  
10 service longevity.

11 Q. So that, for instance, for  
12 employees with 20 to 35 years of  
13 service, you know, would receive an  
14 additional four percent of their pay  
15 credited into their cash balance  
16 account, right?

17 A. That's what it states.

18 Q. Any reason to believe it's  
19 wrong?

20 A. No.

21 Q. And the transition credit  
22 rate increases when you work more  
23 years, right?

24 A. Yes, it does.

Page 71

Page 73

1 this statement. I understand what  
2 that statement says.

3 Q. Are you looking at the  
4 paragraph that begins The interest  
5 credit is based on...?

6 A. Yes.

7 Q. Okay. And reading that  
8 paragraph, what do you understand?

9 A. It's based on the treasury  
10 bond.

11 Q. Okay. So Conectiv based on  
12 the treasury bond rate will credit  
13 your account with a certain amount of  
14 money in that year, right?

15 A. Yes.

16 Q. And that's what happened  
17 here. Your account was credited with  
18 \$3,349.24.

19 A. Yes.

20 Q. As best you understand, do  
21 all employees regardless of age  
22 receive the same interest credit?

23 A. Yes.

24 Q. And if we go back up to the

1 Q. Then if you go back and  
2 Look at top, let's go back to the  
3 first page of this 1999 statement,  
4 you see an ending balance?

5 A. Yes, I do.

6 Q. And would you agree that if  
7 you took the opening balance and  
8 added the employer contribution  
9 credit, interest credit, and  
10 transition credit you get an ending  
11 balance?

12 A. Yes.

13 Q. And is it your  
14 understanding that the ending balance  
15 represents the lump sum value of your  
16 cash balance benefits, you know, as  
17 of the date of statement?

18 A. Yes.

19 Q. Now, you received this  
20 statement in 2000; is that correct?

21 A. Yes.

22 Q. And this statement as we  
23 just walked through provides  
24 information about how your cash

Page 74

Page 76

1 balance benefits are computed, right?  
 2 A. Yes, it does.  
 3 Q. And you testified earlier  
 4 that you hadn't seen any documents  
 5 that explained how your cash balance  
 6 benefits are computed, right?  
 7 MR. SAUDER: Objection. I  
 8 think that mischaracterizes the  
 9 testimony.  
 10 BY MR. BASSMAN:  
 11 Q. Okay. I'll rephrase.  
 12 Have you ever seen any  
 13 documents that explain how your cash  
 14 balance benefits are computed?  
 15 A. Outside of this document,  
 16 no.  
 17 Q. I assume when you say "this  
 18 document," you mean outside of this  
 19 Vanguard statement and other Vanguard  
 20 statements.  
 21 A. Yes.  
 22 Q. So the Vanguard statements  
 23 contain some explanation as to how  
 24 your cash balance benefits are

1 house where you keep pension-related  
 2 documents?  
 3 A. There's a file in my house  
 4 that has whatever they send in the  
 5 mail to me with respect to these  
 6 statements.  
 7 Q. And do you also keep 401(k)  
 8 plan statements in that file?  
 9 A. In a different file.  
 10 Q. Okay. So you have a file  
 11 just for the cash balance plan.  
 12 A. (Witness nods.)  
 13 Q. Is that yes?  
 14 A. Yes.  
 15 Q. Sorry, I didn't hear you.  
 16 Have you provided your  
 17 lawyers with all the documents that  
 18 are in that file?  
 19 A. Yes, I have.  
 20 Q. You can put this to the  
 21 side.  
 22 When did you first learn  
 23 that Conectiv was switching to a cash  
 24 balance plan?

Page 75

Page 77

1 calculated, but no other documents  
 2 that you've seen do?  
 3 A. That's correct.  
 4 Q. When you received your  
 5 Vanguard statements, did they come in  
 6 the mail?  
 7 A. Yes.  
 8 Q. And when you received one,  
 9 did you read it?  
 10 A. Yes.  
 11 Q. Did you read all of the  
 12 text that we just went through?  
 13 A. Not necessarily.  
 14 Q. Did you just look at the  
 15 numbers and the balances?  
 16 A. More often than not.  
 17 Q. And clearly you didn't  
 18 throw out the statements that you  
 19 received, right?  
 20 A. That's correct.  
 21 Q. Did you put them in a file  
 22 somewhere?  
 23 A. Yes, I did.  
 24 Q. Is there a file in your

1 A. Somewhere in the first  
 2 quarter of 1999.  
 3 Q. And how did you learn?  
 4 A. Probably off of a bulletin  
 5 board.  
 6 Q. When you say off of a  
 7 bulletin board, is there a physical  
 8 bulletin board in your office?  
 9 A. Yes.  
 10 Q. And it has company  
 11 announcements on it?  
 12 A. Yes.  
 13 Q. Are these announcements  
 14 that are tacked on to the board?  
 15 A. Yes.  
 16 Q. Did you attend any meetings  
 17 in 1998 or 1999 about the cash  
 18 balance plan conversion?  
 19 A. No.  
 20 Q. Were you invited to any?  
 21 A. Not that I recall.  
 22 Q. What do you remember seeing  
 23 on the bulletin board that told you  
 24 about the cash balance plan

Page 78

Page 80

1 conversion?

2 A. I don't recall what the  
3 document itself looked like.

4 Q. Was it anything more  
5 detailed than there will be a  
6 conversion to something called the  
7 cash balance plan?

8 A. I don't even know if it  
9 was -- it was very broad based.  
10 Something maybe along the lines of  
11 cash balance is coming or, you know.

12 Q. No details, though?

13 A. No. No details, no.

14 Q. Do you recall receiving any  
15 documents from Conectiv? When I say  
16 receiving, I mean receive in any way.  
17 E-mail to you, sent to your mailbox,  
18 physical mailbox, either at home or  
19 work, handed out to you.

20 Do you remember receiving  
21 any documents from Conectiv  
22 discussing the cash balance plan  
23 conversion?

24 A. No.

1 A. PHI has a monthly  
2 newsletter.

3 Q. As I said earlier, when I  
4 say Conectiv I mean everybody.

5 A. Currently, yes.

6 Q. Do you know how long those  
7 newsletters have been coming?

8 A. Since the second merger.  
9 Approximately six, seven months after  
10 the second merger.

11 Q. Which would be  
12 approximately when?

13 A. Within the last 18 months.

14 Q. Before the second merger,  
15 did you receive newsletters from  
16 management?

17 MR. SAUDER: Can we just  
18 clarify what you mean by the second  
19 merger.

20 THE WITNESS: The merger of  
21 Conectiv with Pepco.

22 BY MR. BASSMAN:

23 Q. Okay. And before that  
24 second merger, did you receive

Page 79

Page 81

1 Q. A question I meant to ask  
2 you earlier, I assume the only lawyer  
3 you've spoken to you about your  
4 concerns of the cash balance plan is  
5 Mr. Malone and other people in his  
6 firm.

7 A. That is correct.

8 Q. Let's take a look at what  
9 was previously marked Defendant's  
10 Exhibit 1, and if you could take a  
11 look over that.

12 A. Okay.

13 Q. Have you had a chance to  
14 look over Defendant's Exhibit 1?

15 A. Yes.

16 Q. Ever seen this document  
17 before?

18 A. Never.

19 Q. Ever seen any document  
20 before titled EMerging Times?

21 A. I don't recall.

22 Q. Does Conectiv from time to  
23 time provide newsletters to its  
24 employees?

1 employee newsletters?

2 A. Rarely.

3 Q. When you've received  
4 employee newsletters at any time, has  
5 it been your practice to read them?

6 A. Yes.

7 Q. And when you read them, do  
8 you read them cover to cover, every  
9 word, or do you read them  
10 selectively?

11 A. I skim them, because  
12 they're generally about other  
13 employees, retirements, hirings,  
14 night away campaigns, things of that  
15 nature.

16 Q. Ever recall seeing any  
17 reference in any of the newsletters  
18 you've ever seen from management  
19 about pension plan issues?

20 A. No.

21 Q. If you look in Defendant's  
22 Exhibit 1, on the first page you'll  
23 see there's a column on the  
24 right-hand side.

Page 82

Page 84

1 A. Yes.  
 2 Q. And if you look on the  
 3 bottom right you see there's a Q and  
 4 A between ET and BW. Do you see  
 5 that?  
 6 A. Uh-huh.  
 7 Q. Yes?  
 8 A. Yes.  
 9 Q. Okay. Again, just try to  
 10 remember to answer verbally.  
 11 A. Yes.  
 12 Q. If you go in BW's comments  
 13 to around the middle of that  
 14 paragraph, do you see a sentence that  
 15 begins A new pension plan?  
 16 A. Yes.  
 17 Q. Do you see the sentence, A  
 18 new pension plan will replace the old  
 19 final pay plans with individual  
 20 portable accounts?  
 21 A. Yes, I see that.  
 22 Q. Do you remember any  
 23 discussion in the fall of 1997 around  
 24 your office about a new pension plan

1 BY MR. BASSMAN:  
 2 Q. Have you had a chance to  
 3 review the Q and A that I just  
 4 directed you to?  
 5 A. Yes.  
 6 Q. In just that Q and A that I  
 7 directed you to, on page PHI 3362,  
 8 did you see any misstatements of  
 9 fact?  
 10 MR. SAUDER: Objection.  
 11 You can answer it if you understand  
 12 the question.  
 13 THE WITNESS: With respect  
 14 to what parts of it?  
 15 BY MR. BASSMAN:  
 16 Q. Is anything in the BW  
 17 paragraph factually inaccurate as far  
 18 as you know?  
 19 A. Not to my knowledge.  
 20 Q. Okay. Put that one aside.  
 21 Moving along, let's take a  
 22 look at what's been previously marked  
 23 Defendant's Exhibit 3.  
 24 A. Okay.

Page 83

Page 85

1 coming in to place that will replace  
 2 the old one?  
 3 A. None.  
 4 Q. You can put that aside.  
 5 Take a look at what's been  
 6 previously marked Defendant's Exhibit  
 7 2.  
 8 A. Okay.  
 9 Q. Have you had an opportunity  
 10 to look over Defendant's 2?  
 11 A. Yes.  
 12 Q. Ever seen this before?  
 13 A. No.  
 14 Q. If you could turn to the  
 15 second page of Defendant's Exhibit 2,  
 16 and just read over to yourself on the  
 17 left-hand column the Q and A that  
 18 begins ET, Can you tell us more about  
 19 the new pension arrangement, and just  
 20 read that question and BW's response  
 21 to it to yourself.  
 22 MR. SAUDER: This is PHI  
 23 3362.  
 24 THE WITNESS: Okay.

1 Q. Have you had a chance to  
 2 look over Defendant's Exhibit 3?  
 3 A. Yes.  
 4 Q. Ever seen this before?  
 5 A. No.  
 6 Q. If you could turn to the  
 7 fourth page of Defendant's 3, which  
 8 has the Bates stamp JMC 447.  
 9 A. Okay.  
 10 Q. Do you see some handwriting  
 11 on that page?  
 12 A. Yes, I do.  
 13 Q. Do you recognize the  
 14 handwriting?  
 15 A. No, I don't. It's not  
 16 mine.  
 17 Q. You can put that aside.  
 18 Let's take a look at what's  
 19 been previously marked Defendant's  
 20 Exhibit 4.  
 21 MR. SAUDER: Just for the  
 22 record, this is JMC 215 through 217.  
 23 THE WITNESS: Okay.  
 24 BY MR. BASSMAN:

Page 86

Page 88

1 Q. Have you had an opportunity  
2 to review Defendant's Exhibit 4?

3 A. Yes, I have.

4 Q. Ever seen this document  
5 before?

6 A. No, I have not.

7 Q. Have you ever received  
8 documents from Conectiv that are  
9 titled facts, f-a-c-t-s?

10 A. Very rarely.

11 Q. When do you recall seeing  
12 documents with the header "facts?"

13 A. Mostly secondhand. I mean,  
14 during that time, this time  
15 specifically, there was a large  
16 amount of physical transition  
17 movement from one place to another as  
18 a result of downsizing buildings, and  
19 for the longest time mail stops were  
20 absolute chaos.

21 MR. SAUDER: I just ask you  
22 to define what you mean by "this  
23 time." What time frame are you  
24 talking about?

1 Q. But you don't remember  
2 receiving documents with the title  
3 "facts" in your mailbox either at  
4 work or at home?

5 A. That's correct.

6 Q. In your review of  
7 Defendant's Exhibit 4, did you see,  
8 and again, just to the best of your  
9 knowledge, any representations that  
10 were made that are factually  
11 inaccurate?

12 A. No.

13 Q. And would you agree that  
14 Defendant's Exhibit 4 contains an  
15 explanation as to how benefits are  
16 calculated under the cash balance  
17 plan? Again, to the best of your  
18 knowledge.

19 A. Yes.

20 Q. You can put this one aside.  
21 Move on to Defendant's  
22 Exhibit Number 6. If you could take  
23 a minute to look over that.

24 A. Okay.

Page 87

Page 89

1 THE WITNESS: "This time"  
2 we're talking about in the first half  
3 of 1999 going up through '98 to the  
4 merger.

5 BY MR. BASSMAN:

6 Q. So when you say the merger,  
7 the merger between Atlantic City and  
8 DelMarVa?

9 A. That's correct.

10 Q. But you have seen documents  
11 with the heading "facts" before?

12 A. Yes.

13 Q. When you say secondhand, do  
14 you mean that other employees would  
15 give them to you?

16 A. Lying about.

17 Q. Okay. So they would be  
18 lying about the office and you would  
19 pick one up?

20 A. Well, I don't mean lying in  
21 any great numbers. I mean, if I went  
22 to another facility and saw something  
23 laying there I may have went, picked  
24 it up and glanced at it casually.

1 Q. Have you had an opportunity  
2 to review Defendant's Exhibit 6?

3 A. Yes.

4 Q. Ever seen this before?

5 A. No.

6 Q. On December 21, 1998, were  
7 you a Conectiv management employee?

8 A. Yes, I was.

9 Q. And it's your testimony  
10 that even though you were a Conectiv  
11 management employee, you never  
12 received this notice?

13 A. Yes, that is correct.

14 Q. Did anyone else with whom  
15 you worked in late 1998, early 1999  
16 tell you that they had received a  
17 notice like this?

18 A. No.

19 MR. SAUDER: Objection to  
20 the term "notice."

21 BY MR. BASSMAN:

22 Q. In your review of  
23 Defendant's Exhibit 6, and, again, to  
24 the best of your knowledge, did you



Page 90

Page 92

1 see any statements that you believe  
2 are factually inaccurate?

3 A. No.

4 Q. Would you agree that  
5 Defendant's Exhibit 6 explains how  
6 benefits are calculated under the  
7 cash balance plan?

8 A. Yes.

9 Q. Okay. You can put this one  
10 aside.

11 Probably what you guessed  
12 is the next one we're going to do is  
13 Defendant's Exhibit Number 7. Take a  
14 moment to look that over.

15 MR. SAUDER: For the  
16 record, this is JMC 190 through 196.

17 THE WITNESS: Okay.

18 BY MR. BASSMAN:

19 Q. Have you had a chance to  
20 look over Defendant's Exhibit 7?

21 A. Yes, I have.

22 Q. Ever seen this before?

23 A. No, I have not.

24 Q. Have you ever seen any

1 plan?

2 A. Yes.

3 Q. Put that one to the side.

4 Let's take a look at what's  
5 been previously marked Defendant's  
6 Exhibit 8. If you could take a look  
7 over that.

8 Have you had a chance to  
9 review Defendant's Exhibit 8?

10 A. Yes, I have.

11 Q. And have you ever seen this  
12 before?

13 A. No, I have not.

14 Q. In your review of  
15 Defendant's Exhibit 8, did you see  
16 any representations that you think  
17 were false?

18 MR. SAUDER: Objection.

19 THE WITNESS: I just  
20 haven't seen this document.

21 BY MR. BASSMAN:

22 Q. Okay. And my question is,  
23 just when you looked it over now for  
24 the first time, did you say anything

Page 91

Page 93

1 documents before titled Your Conectiv  
2 Total Rewards?

3 A. No.

4 Q. Anybody else with whom you  
5 work ever tell you that they received  
6 a document titled Your Conectiv Total  
7 Rewards?

8 A. No.

9 Q. Ever see a document in a  
10 Conectiv facility titled Your  
11 Conectiv Total Rewards?

12 A. No.

13 Q. In your review of  
14 Defendant's Exhibit 7, did you see,  
15 and, again, just to the best of your  
16 knowledge, any factual inaccuracies?

17 A. No.

18 MR. SAUDER: Objection.  
19 You can answer.

20 BY MR. BASSMAN:

21 Q. And would you agree that  
22 Defendant's Exhibit 7 contains an  
23 explanation as to how benefits are  
24 calculated under the cash balance

1 in the document that you thought was  
2 untrue?

3 A. No.

4 MR. SAUDER: Objection.  
5 Same objection.

6 BY MR. BASSMAN:

7 Q. Do you agree that  
8 Defendant's Exhibit 8 also contains  
9 an explanation as to how benefits are  
10 calculated under the cash balance  
11 plan?

12 A. Yes.

13 Q. Mr. Fink, do you have any  
14 understanding as to why Conectiv  
15 converted to a cash balance plan?

16 A. Do I have any  
17 understanding?

18 Q. Yes.

19 MR. SAUDER: Independent of  
20 any conversations you had with your  
21 attorney.

22 THE WITNESS: No.

23 BY MR. BASSMAN:

24 Q. And, again, independent of

Page 94

Page 96

1 any conversations with your  
2 attorneys, do you have an opinion as  
3 to why Conectiv converted to a cash  
4 balance plan?

5 A. Yes.

6 Q. What is it?

7 A. Cost savings.

8 Q. Just a way to save money?

9 A. Yes.

10 Q. And why do you think that  
11 it's cheaper for Conectiv to provide  
12 the cash balance plan than the  
13 previous Atlantic City plan?

14 A. In one of those documents I  
15 saw something I had never seen in  
16 writing before about a 650 percent  
17 cap on that money.

18 Q. When you say one of those  
19 documents, you mean one of the  
20 documents that you've looked at this  
21 morning?

22 A. Yes. That is correct.

23 Q. Besides the document that  
24 you looked at this morning with the

1 Q. But you had heard about it  
2 before?

3 A. Yes.

4 Q. Let's take a look at what's  
5 been previously marked Defendant's  
6 Exhibit 9.

7 MR. SAUDER: This is PHI  
8 3428 through 3431.

9 THE WITNESS: Okay.

10 BY MR. BASSMAN:

11 Q. Have you had a chance to  
12 look over Defendant's Exhibit 9?

13 A. Yes, I have.

14 Q. Ever seen it before?

15 A. No, I have not.

16 Q. Ever seen an employee  
17 newsletter from Conectiv titled  
18 InSight before?

19 A. On occasion.

20 Q. Did you receive a copy of a  
21 newsletter titled InSight in your  
22 home or employee mailboxes?

23 A. No.

24 Q. In what context did you see

Page 95

Page 97

1 reference to the 650 percent cap, any  
2 other reason why you think the cash  
3 balance plan is cheaper for Conectiv  
4 than the old Atlantic City plan?

5 A. No.

6 Q. So did you just form that  
7 opinion this morning?

8 A. No. I said that was the  
9 first time I saw that in writing.

10 Q. Okay. Had you heard  
11 verbally that the cash balance plan  
12 is cheaper than the old Atlantic City  
13 plan?

14 A. Yes.

15 Q. From whom? And, again,  
16 excluding your lawyers.

17 A. My contemporaries.

18 Q. Who?

19 A. Well, it's -- it's widely  
20 spoken amongst management people that  
21 are subject to this retirement.  
22 There is frequently reference to that  
23 650 percent cap that I've never seen  
24 in writing.

1 InSight?

2 A. Casual contact in, you  
3 know, company facility.

4 Q. But a copy has never been  
5 sent to you as far as you remember?

6 A. No.

7 Q. When you are seeing copies  
8 of InSight, the newsletter InSight in  
9 facilities, is it your practice to  
10 read it?

11 A. Not necessarily. I have on  
12 occasion picked them up and scanned  
13 them, as I said previously.

14 Q. Why don't you read them all  
15 as a matter of practice?

16 A. It's -- if I'm not getting  
17 it, I'm not really -- at the time --  
18 at the time of merger there was also  
19 some malfunction with home addresses,  
20 and for the longest time all of my  
21 company materials were going to my  
22 ex-wife's house, including sometimes  
23 statements and things of that nature.

24 Q. Do you recall when that

Page 98

Page 100

1 problem was corrected?  
 2 A. It was corrected, it  
 3 happened again, and then it was  
 4 re-corrected. I can't tell you  
 5 specifically what those dates were.  
 6 Q. Has the company  
 7 inadvertently sent mail to your  
 8 ex-wife's address in the last five  
 9 years?  
 10 A. Yes.  
 11 Q. Last two years?  
 12 A. Yes.  
 13 Q. Last year?  
 14 A. Yes.  
 15 Q. Okay. We're only in '07.  
 16 A. Not this year. It  
 17 surrounded existing stock  
 18 information.  
 19 Q. If you could turn to the  
 20 second page of Defendant's Exhibit 9,  
 21 and if you could look on -- you see  
 22 there's a left-hand column titled  
 23 Cash Balance Communications Coming.  
 24 A. Yes.

1 A. In 1999 I was relocated to  
 2 the Pleasantville district from the  
 3 Cologne complex in Cologne, New  
 4 Jersey.  
 5 Q. And you weren't invited to  
 6 attend any meetings in a different  
 7 facility in 1999?  
 8 A. No. No. Somewhere in the  
 9 beginning of -- excuse me --  
 10 somewhere in the mid-portion of '98  
 11 we transitioned from one building to  
 12 another. Bear in mind that I am the  
 13 only management employee in my area.  
 14 I supervised at that time 30 union  
 15 people that were unaffected by this.  
 16 Q. When you say in your area,  
 17 is that in the Pleasantville  
 18 facility?  
 19 A. Yes.  
 20 MR. BASSMAN: Okay. Let's  
 21 take a five-minute break.  
 22 RECESS  
 23 MR. BASSMAN: Back on the  
 24 record.

Page 99

Page 101

1 Q. If you look at the bottom  
 2 of that column, do you see a heading  
 3 July, August Cash Balance Pension  
 4 Plan Meetings for Employees?  
 5 A. I do.  
 6 Q. Does that heading refresh  
 7 your recollection as to whether you  
 8 attended any meetings about the cash  
 9 balance plan?  
 10 A. I did not attend any such  
 11 meeting or did I have knowledge of  
 12 any such meetings.  
 13 Q. Never heard at all from  
 14 anyone you worked with in 1999 that  
 15 there were meetings being conducted  
 16 about the cash balance plan?  
 17 A. There was always some  
 18 rhetoric about the meetings being  
 19 held, but there was never any held in  
 20 the facility I worked at nor was  
 21 there any information relating to  
 22 attendance locally to one.  
 23 Q. And what facility were you  
 24 located in in 1999?

1 BY MR. BASSMAN:  
 2 Q. Mr. Fink, could you please  
 3 take a look over a document  
 4 previously marked Defendant's Exhibit  
 5 10.  
 6 Have you had an opportunity  
 7 to look over Defendant's Exhibit 10?  
 8 A. Yes, I have.  
 9 Q. Ever seen this before?  
 10 A. No, I have not.  
 11 Q. If I could direct your  
 12 attention on Defendant's Exhibit 10  
 13 to the third paragraph and the second  
 14 sentence.  
 15 Do you see the sentence,  
 16 quote, Recent stories in the national  
 17 media have raised concerns about some  
 18 cash balance plans?  
 19 A. I see that.  
 20 Q. Do you remember in 1999  
 21 seeing any stories in the media about  
 22 cash balance plans?  
 23 A. I don't recall.  
 24 Q. Do you remember any

Page 102

Page 104

1 discussion with coworkers in 1999  
2 about media stories about cash  
3 balance plans?

4 A. One liners. No real  
5 discussion.

6 Q. What sort of one liners do  
7 you remember?

8 A. People's comments of, you  
9 know, they're really getting us or  
10 this is, you know, a real bargain  
11 kind of thing.

12 Q. A real bargain for the  
13 employer?

14 A. Yes. It was derisive type  
15 of things.

16 MR. SAUDER: And just to  
17 clarify, just to read the full  
18 sentence it says, Recent stories in  
19 the national media have raised  
20 concerns about some cash balance  
21 plans that do not offer the same  
22 level of financial security or  
23 grandfathering provisions as  
24 Conectiv's cash balance pension plan,

1 the term "unhappy."

2 BY MR. BASSMAN:

3 Q. Well, do you want me to  
4 rephrase the question?

5 A. Please.

6 Q. In 1999, did you believe  
7 that you would be adversely affected  
8 financially by the switch to a cash  
9 balance plan?

10 A. I was unsure but highly  
11 suspicious.

12 Q. And why were you suspicious  
13 in 1999?

14 A. Because of things like we  
15 just touched on. Bantering of  
16 coworkers as you pass by and  
17 one-line, you know, statements about  
18 total payoffs and what they could  
19 possibly be and the loss of funds.

20 Q. When other employees made  
21 statements to you in 1999, these  
22 derisive comments that you've  
23 described, did you ask them any  
24 follow-up questions?

Page 103

Page 105

1 period.

2 Next sentence, One part of  
3 the presentation will address these  
4 concerns and demonstrate how  
5 Conectiv's plan is different.

6 BY MR. BASSMAN:

7 Q. Who do you remember in 1999  
8 making these derisive comments?

9 A. I can't -- I couldn't give  
10 you a name. It was just the  
11 common -- it was common bantering of  
12 anybody that was affected by this.

13 Q. Did you take part in that  
14 bantering in 1999?

15 A. I can't say that I did, no.

16 Q. Can you say that you  
17 didn't?

18 A. I couldn't say either way.

19 Q. It's possible?

20 A. It's possible.

21 Q. In 1999 were you unhappy  
22 with the switch to a cash balance  
23 plan?

24 MR. SAUDER: Objection to

1 A. No.

2 Q. After you heard these  
3 derisive comments in 1999, did you  
4 yourself take any steps to research  
5 cash balance plans?

6 A. I can't say that I did at  
7 this point in 1999. I can't say  
8 that. I don't think I had a good  
9 enough understanding. I don't think  
10 there was enough information  
11 presented to me, or at least that I  
12 had access to, based on the things  
13 that I have explained to you about  
14 the closing of facilities, the  
15 movement of people, and so on.

16 Q. Understanding that you  
17 didn't feel you had much information  
18 in 1999, did you take any steps in  
19 1999 to find out more about  
20 Conectiv's cash balance plan?

21 A. Outside of my contact to  
22 the HR representative to say, you  
23 know, is there any information about  
24 this in maybe '04, I had a similar

Page 106

Page 108

1 kind of contact casually with that  
2 person because I've known the HR  
3 representative; actually used to work  
4 for me.

5 Q. So in 1999 you went and  
6 spoke with the HR representative?

7 A. I can't say that I sought  
8 him out. It was a casual contact  
9 somewhere. You know, it was like,  
10 hey, George, you know, what's up with  
11 that kind of thing.

12 Q. What's George's last name?

13 A. Bleazard.

14 Q. Can you spell that.

15 A. B-L-E-A-Z-A-R-D.

16 Q. And what did George say to  
17 you?

18 A. He said he thought it was  
19 better because it was portable and so  
20 on and the company was very adamant  
21 about that it was better, from what  
22 little information I could ever get,  
23 because it was portable, and I see  
24 that in these documents frequently.

1 employee left the company at age 30  
2 they couldn't take an immediate lump  
3 sum on their pension; they had to  
4 wait until age 55 or 65?

5 A. That is correct. That was  
6 my understanding.

7 Q. Do you agree with George  
8 today that the portability in the  
9 cash balance plan is a benefit that  
10 wasn't contained in the old Atlantic  
11 City plan?

12 A. It may be the only benefit.

13 Q. But it is a benefit?

14 A. I would think it would be  
15 beneficial for anybody that was a  
16 short-term person of five, six,  
17 seven, eight years to be able to --  
18 and young, to be able to move their  
19 money where it could do them more  
20 justice where they could get a bigger  
21 sum of money that they could accrue  
22 interest rates on.

23 Q. Do you think for short-term  
24 employees the cash balance plan is

Page 107

Page 109

1 Q. What is your understanding  
2 of the term portable?

3 A. There was some dialogue at  
4 some point, and I can't tell you  
5 where or when, about the American  
6 work force and how people that are 21  
7 won't have jobs that will last 20, 25  
8 years, 30 years for large  
9 corporations or utilities and retire  
10 from them.

11 People would have  
12 futuristically three, four short-term  
13 stints of employment, five years,  
14 blah, blah, blah, ten years, 15  
15 years.

16 Portable meaning that you  
17 spend five years at AE and you take  
18 your pension, it's not frozen into  
19 your pension plan, you take that lump  
20 sum and you can move it to where you  
21 would want to move it to.

22 Q. And is it your  
23 understanding that under the old  
24 Atlantic City plan, if, say, an

1 financially better than the old  
2 Atlantic City plan?

3 MR. SAUDER: Objection.

4 THE WITNESS: I can't say.  
5 BY MR. BASSMAN:

6 Q. No opinion about that one  
7 way or the other?

8 A. I wouldn't -- I wouldn't --  
9 I don't have enough information  
10 really complete. You know, there's  
11 too many things to speculate there  
12 for that, for somebody who's just  
13 short-term, salary -- there's a whole  
14 host of things.

15 Q. Let me give you a  
16 hypothetical then. If an employee  
17 were to start at Conectiv at age 18,  
18 work for ten years and leave at age  
19 28, do you think that person, that  
20 particular person, would be better  
21 off financially under the cash  
22 balance plan or under the old  
23 Atlantic City plan?

24 MR. SAUDER: Objection.

1 THE WITNESS: I really  
2 can't say.  
3 BY MR. BASSMAN:  
4 Q. Well --  
5 A. My, my gut feeling is they  
6 would be better under the historic  
7 plan.  
8 Q. Why?  
9 A. And I'm basing that  
10 strictly on the information we  
11 already spoke about people that are  
12 leaving with larger sums of money.  
13 Q. Although you do understand  
14 that in the case of my hypothetical  
15 28 year old leaving, he's going to  
16 have to wait at least 25 years to get  
17 any money paid to him, right?  
18 A. Right.  
19 Q. And during that time this  
20 hypothetical employee could die,  
21 right?  
22 A. I would imagine it's within  
23 the realm of possibility.  
24 Q. Or in the course of 25

1 amount of money he would get under  
2 the cash balance plan were lower than  
3 under the old Atlantic City plan, it  
4 might be in his self interest to be  
5 under the cash balance plan because  
6 he's guaranteed to get his money the  
7 day he walks out the door, right?  
8 MR. SAUDER: Objection.  
9 THE WITNESS: I don't know  
10 if he gets his money the day he walks  
11 out the door, but it's liquid in some  
12 fashion.  
13 BY MR. BASSMAN:  
14 Q. And that's an advantage?  
15 A. I would believe so.  
16 Q. When you spoke to George in  
17 1999 about the cash balance plan, did  
18 you ask him for any documents?  
19 A. I can't say if I did or  
20 not. My relationship with him is  
21 very casual. I've known him for a  
22 long time prior to either one of our  
23 employment at ACE, Atlantic City  
24 Electric, and as I mentioned before,

1 years, something could happen to the  
2 plan's finances which could hinder  
3 its ability to pay him, right?  
4 A. I would imagine so.  
5 Q. And so if you don't get  
6 your money immediately when you leave  
7 the company and it has to sit in a  
8 pension plan, there's some risk that  
9 either you're not going to be around  
10 to get the money or the money's not  
11 going to be there to pay you, right?  
12 A. Yes.  
13 Q. And the portability feature  
14 of the cash balance plan eliminates  
15 that risk, right?  
16 A. It certainly would decrease  
17 it. That's for sure.  
18 Q. And decreasing that risk is  
19 beneficial to, say, my hypothetical  
20 28 year old, right?  
21 A. I would imagine it would  
22 be, yes.  
23 Q. So for that person it's  
24 certainly possible that even if the

1 he was a direct report of mine.  
2 Q. Did he offer to provide you  
3 any documents in 1999?  
4 A. No.  
5 Q. Did George provide you with  
6 the name of anyone else whom you  
7 could follow up with with questions  
8 about the cash balance plan?  
9 A. No.  
10 Q. Did you ask him for a  
11 follow-up name?  
12 A. No. I can't say that I  
13 did.  
14 Q. Outside of talking to  
15 George -- by the way, just before I  
16 go there, is there anything else that  
17 you remember that either you said or  
18 George said in that conversation in  
19 1999 that you haven't told me  
20 already?  
21 A. No, I can't say that there  
22 is.  
23 Q. Outside of talking to  
24 George in 1999, did you take any



Page 114

Page 116

1 steps to investigate Conectiv's cash  
2 balance plan?

3 A. No. I knew George, like I  
4 said, for a considerable length of  
5 time. He was purveying that it was  
6 in everyone's best interest, but I'm  
7 still very suspect of whether or not  
8 it was in everyone's best interest.

9 Q. So you didn't believe him  
10 in 1999?

11 A. I can't say that I didn't  
12 believe him. I just was -- it was  
13 unclear to me. I know George, I have  
14 a reasonable amount of faith in his  
15 judgment, but that doesn't mean that  
16 I would believe him -- he doesn't  
17 have carte blanche with me.

18 Q. Okay. So after talking to  
19 George in 1999, you weren't fully  
20 convinced that the cash balance plan  
21 was going to be in your best  
22 interest?

23 A. It's hard for me to say,  
24 because there was so, so many people

1 Let's take a look at  
2 Defendant's Exhibit 11.

3 A. Okay.

4 Q. Have you had a chance to  
5 look over Defendant's Exhibit 11?

6 A. Yes, I have.

7 Q. Ever seen this before?

8 A. No, I've not.

9 Q. Okay. Put that one just  
10 back in the middle of the table.

11 Take a look over  
12 Defendant's Exhibit 12.

13 A. Okay.

14 Q. Have you had a chance to  
15 look over Defendant's 12?

16 A. Yes, I have.

17 Q. Ever seen this before?

18 A. No, I haven't.

19 Q. Have you ever seen an  
20 online publication on the Conectiv  
21 intranet called InSight?

22 A. I don't recall ever seeing  
23 this document online.

24 Q. Do you remember ever seeing

Page 115

Page 117

1 that were saying that it was not in  
2 their best interest, but the little  
3 dribs and drabs that I would get --  
4 and from people, like I just said,  
5 that I would have a reasonable amount  
6 of trust in that represented the  
7 corporation said that it would be in  
8 everybody's best interest.

9 But portability to me  
10 doesn't necessarily encapsulate  
11 everything that's in my best  
12 interest. It is a benefit, but it  
13 would not necessarily be something  
14 that I would sell my soul for.

15 Q. Is it your intent to remain  
16 an employee of Conectiv until you  
17 retire?

18 A. Yes.

19 Q. So given that intent,  
20 portability is not much of a benefit  
21 to you personally?

22 A. That's correct.

23 Q. You can put this document  
24 aside.

1 anything titled InSight on the  
2 Conectiv intranet page?

3 A. Not that I can recall.

4 Q. You can put that one over  
5 there.

6 Take a look at what's been  
7 marked Defendant's Exhibit 13.

8 A. Okay.

9 Q. Have you had a chance to  
10 look over Defendant's Exhibit 13?

11 A. Yes, I have.

12 Q. Ever seen this before?

13 A. No, I have not.

14 Q. If you look on the first  
15 page, do you see some handwriting?

16 A. Yes, I do.

17 Q. Do you recognize that  
18 handwriting?

19 A. No, it's not mine.

20 Q. Okay. Do you recognize it  
21 as anybody else's?

22 A. No.

23 Q. Can you turn to the second  
24 page of Exhibit 13. I want to direct

Page 118

Page 120

1 your attention to the box in the top  
2 left-hand corner with the heading  
3 Important Perspectives on Conectiv's  
4 New Retirement Program.

5 A. Okay.

6 Q. Do you see that?

7 A. Yes, I do.

8 Q. I want you to look at the  
9 second bullet point that says, Cash  
10 balance plans are controversial. Do  
11 you see that?

12 A. Yes, I do.

13 Q. Do you remember, outside of  
14 what you've already testified to, any  
15 discussions in 1999 about cash  
16 balance plans being controversial?

17 A. No. This is the first time  
18 I've seen that in writing in a  
19 company document.

20 Q. And underneath cash balance  
21 plans are controversial you see the  
22 sub bullet Series of Wall Street  
23 Journal articles.

24 A. Yes.

1 congressional hearings regarding cash  
2 balance plans?

3 A. No.

4 Q. Do you ever read about  
5 congressional hearings about cash  
6 balance plans?

7 A. No.

8 Q. The next full bullet  
9 says -- you see Criticisms leveled at  
10 cash balance plans?

11 A. Yes, I do.

12 Q. And the first one, the  
13 first sub bullet under that you see  
14 is Masks cost cutting.

15 A. Yes.

16 Q. And that's the criticism of  
17 the Conectiv cash balance plan, one  
18 of them, that you heard in 1999?

19 A. In a different mannerism.

20 Q. But the same basic  
21 criticism?

22 A. Same principal, yeah.

23 Q. And the next sub bullet is  
24 Poor handling of communication

Page 119

Page 121

1 Q. Have you ever heard of any  
2 Wall Street Journal articles about  
3 cash balance plans?

4 A. No, I've not.

5 Q. Never mentioned to you by  
6 any coworkers?

7 A. No.

8 Q. And you've never read any?

9 A. No.

10 Q. If you had seen this slide  
11 in a presentation, would you have  
12 researched those articles and read  
13 them?

14 A. I would be probably  
15 inclined to at least investigate  
16 something about them.

17 Q. And underneath the sub  
18 bullet Series of Wall Street  
19 articles, do you see another sub  
20 bullet that says Congressional  
21 hearings?

22 A. Yes.

23 Q. Did you ever hear any  
24 discussion at any time about

1 transition. Do you see that?

2 A. Yes, I do.

3 Q. In 1999, do you recall any  
4 discussions among Conectiv employees  
5 about a poor handling of  
6 communication/transition?

7 A. Other than my own  
8 occasional rumblings?

9 Q. Yes.

10 A. No.

11 Q. What were your occasional  
12 rumblings?

13 A. I believe during one of  
14 those casual conversations with  
15 George Bleazard it was that I was not  
16 comfortable with what was going on  
17 because I didn't have enough  
18 information.

19 Q. Did he offer to provide you  
20 more information?

21 A. Well, I believe he said  
22 there will be a series of meetings  
23 like I'm seeing throughout these  
24 documents. I thought it was comical

Page 122

Page 124

1 because I believe one of these  
2 locations that was close to me was  
3 closed, and that's maybe why the  
4 rescheduling.

5 Q. So George mentioned to you  
6 in 1999 that there will be a series  
7 of meetings that will answer your  
8 questions about the cash balance  
9 plan, right?

10 A. At some point, yeah. Yes.

11 Q. But you were never invited  
12 to any such meeting?

13 A. No.

14 Q. Did you follow up with  
15 anyone in HR to ask why you hadn't  
16 been invited to a meeting about the  
17 cash balance plan after George told  
18 you they were going to occur?

19 A. I can't say that I did.

20 Q. Do you see any factual  
21 statements in Defendant's Exhibit 13  
22 based on your view today that you  
23 believe are false?

24 MR. SAUDER: Objection.

1 A. I can't say that I do.

2 Q. You can put this one in the  
3 finished pile.

4 If you could take a look at  
5 what's previously been marked as  
6 Defendant's Exhibit 19.

7 Have you had a chance to  
8 look over Defendant's Exhibit 19?

9 A. Yep.

10 Q. Ever seen this before?

11 A. Nope.

12 Q. Ever see a document before  
13 with the heading Summary Plan  
14 Description?

15 A. No, I have not.

16 Q. Has any representative of  
17 HR at Conectiv ever told you that you  
18 could review a copy of a Summary Plan  
19 Description?

20 A. No, they have not.

21 Q. If you could hand that  
22 back.

23 A. (Witness complies.)

24 Q. By the way, Mr. Fink, I

Page 123

Page 125

1 THE WITNESS: I can't  
2 identify any, no.

3 BY MR. BASSMAN:

4 Q. And, again, obviously, just  
5 the best of your knowledge.

6 You can put this one to the  
7 side.

8 Take a look at what's been  
9 previously marked, please, as  
10 Defendant's Exhibit 14.

11 A. Okay.

12 Q. Have you had a chance to  
13 look over Defendant's Exhibit 14?

14 A. Yes.

15 Q. Ever seen this document  
16 before?

17 A. No.

18 Q. In your review of this  
19 document just now, did you see any  
20 factual statements in it that you  
21 believe are false?

22 MR. SAUDER: Objection.

23 BY MR. BASSMAN:

24 Q. You can answer.

1 don't know if you have a preference  
2 for when you would like to break for  
3 lunch. I notice it's a little after  
4 12.

5 A. No preference whatsoever.

6 Q. Okay. If at any time you  
7 start to feel your stomach rumbling  
8 and you'd like to take a break and  
9 get some food, just let me know.  
10 Otherwise, I'll probably take a lunch  
11 stop relatively soon.

12 A. That's fine.

13 Q. I'll have you take a look  
14 at what's been previously marked  
15 Defendant's Exhibit 22.

16 MR. SAUDER: This document  
17 is marked MWW 308 through MWW 311. I  
18 think we established yesterday that  
19 the last page of the document 311 was  
20 inadvertently stapled to this  
21 document.

22 MR. BASSMAN: That's  
23 correct, yes.

24 BY MR. BASSMAN:

Page 126

Page 128

1 Q. Have you had a chance to  
2 review Defendant's Exhibit 22?  
3 A. Yes.  
4 Q. Just focusing on the first  
5 three pages of the exhibit, which I  
6 think really, as your counsel just  
7 explained, forms the document  
8 entitled Introducing the New Cash  
9 Balance Plan Retirement Plan.  
10 Have you seen those first  
11 three pages before?  
12 A. Just looks like many of the  
13 other documents today.  
14 Q. So you've never seen it  
15 before?  
16 A. No.  
17 Q. Again, directing your  
18 attention to the first three pages of  
19 Exhibit 22, to the best of your  
20 knowledge, are any of the factual  
21 statements set forth inaccurate?  
22 MR. SAUDER: Objection.  
23 THE WITNESS: No.  
24 BY MR. BASSMAN:

1 representative of Conectiv?  
2 A. That's correct.  
3 Q. Do you recall any of your  
4 coworkers discussing receiving a  
5 Summary Plan Description in the mail?  
6 A. No.  
7 Q. Mr. Ward never told you he  
8 received one in the mail?  
9 A. No.  
10 Q. In 2004 when you became  
11 suspicious of the cash balance plan,  
12 did you ask any of your coworkers if  
13 they had received any documents about  
14 it?  
15 A. No. I can't say that I  
16 did. I -- I believe that's when I  
17 started directing my activity  
18 directly to the site.  
19 Q. If you could put this one  
20 to the side.  
21 I'd like to move back in  
22 numerical order a little bit and show  
23 you what's been previously marked as  
24 Defendant's Exhibit 15. If you could

Page 127

Page 129

1 Q. You can put that aside.  
2 Let's take a look at what's  
3 been previously marked Defendant's  
4 Exhibit 23. Defendant's Exhibit 23  
5 is a letter that Mr. Ward testified  
6 he received from Conectiv's HR  
7 department in September 2002.  
8 Have you had a chance to  
9 look over Defendant's Exhibit 23?  
10 A. Yes.  
11 Q. Have you ever seen this  
12 document before?  
13 A. No.  
14 Q. Have you ever received a  
15 letter from Conectiv's HR department  
16 enclosing information about any  
17 Conectiv pension benefits?  
18 A. I don't recall ever seeing  
19 this or getting anything. I don't  
20 recognize this manager's name.  
21 Q. When you say you don't  
22 remember receiving anything, I assume  
23 you don't recall ever receiving a  
24 letter in this format from an HR

1 take a look over that.  
2 A. Okay.  
3 Q. Have you had a chance to  
4 look over Defendant's 15?  
5 A. Yes.  
6 Q. Have you ever seen this  
7 document before?  
8 A. No.  
9 Q. If I could direct your  
10 attention to Mr. Charles' e-mail on  
11 the bottom?  
12 A. Yes.  
13 Q. You see in the first  
14 sentence under Dear HR, you see that  
15 Mr. Charles makes a reference to a  
16 class action lawsuit by the employees  
17 of IBM as it pertains to IBM's  
18 decision to convert their employees  
19 retirement plan into the cash balance  
20 plan?  
21 A. Yes.  
22 Q. Before today have you ever  
23 heard of a class action lawsuit  
24 against IBM about IBM's cash balance

Page 130

Page 132

1 plan?  
 2 A. Yes.  
 3 Q. When did you first hear  
 4 about the IBM lawsuit?  
 5 A. I heard it on the news  
 6 possibly, like the 6 o'clock news on  
 7 the television.  
 8 Q. Do you remember what  
 9 station?  
 10 A. No.  
 11 Q. Is there any particular  
 12 news station that you typically watch  
 13 in the evening?  
 14 A. 3, 6, or 10, one of the  
 15 Philadelphia stations.  
 16 Q. After you heard about the  
 17 IBM lawsuit on the news, did you  
 18 discuss it with anyone?  
 19 A. No.  
 20 Q. Did you take any steps to  
 21 research what was going on in that  
 22 lawsuit?  
 23 A. At that time, no.  
 24 Q. At any later time did you?

1 news and then stopped and looked at  
 2 it.  
 3 Q. Ever discuss the IBM  
 4 lawsuit with Mr. Charles?  
 5 A. Nope.  
 6 Q. When you went on the  
 7 website, did the website link you to  
 8 any documents about the lawsuit?  
 9 A. No. It wasn't very  
 10 professional.  
 11 Q. Do you remember what the  
 12 URL was?  
 13 A. No.  
 14 Q. Did you print any pages  
 15 from it?  
 16 A. No.  
 17 Q. Looking further at Mr.  
 18 Charles' e-mail -- actually, I take  
 19 that back.  
 20 One other follow-up  
 21 question. Do you remember when you  
 22 saw this TV news story?  
 23 A. I can't really quantify as  
 24 to when. I can't really say when.

Page 131

Page 133

1 A. I subsequently found the  
 2 website that has some information  
 3 about the lawsuit on it.  
 4 Q. Do you recall when you  
 5 found that website?  
 6 A. It was relatively current.  
 7 Q. Within the last six months?  
 8 A. Six to 12 possibly. It was  
 9 not a very professional site. It was  
 10 more someone had a page posted on the  
 11 Internet or a site on the Internet.  
 12 Q. And how did you find this  
 13 website?  
 14 A. I was looking for  
 15 something -- I don't remember what  
 16 prompted me to do it, but I did find  
 17 it. Inadvertently, almost.  
 18 Q. So you didn't run a search  
 19 through a search engine trying to  
 20 find websites that addressed the IBM  
 21 lawsuit?  
 22 A. No. I just kind of like  
 23 stumbled on it, and tied it back to  
 24 what I had heard previously on the

1 Q. Before 2005?  
 2 A. I'm going to say around  
 3 that time. I can't be absolutely  
 4 certain.  
 5 Q. Okay. Looking, again, at  
 6 Mr. Charles' e-mail, I want to direct  
 7 you to the second paragraph, and in  
 8 particular the second to the last  
 9 sentence in it, where Mr. Charles  
 10 wrote, I've always felt from the  
 11 inception of the cash balance plan  
 12 that it was unfair.  
 13 A. Yes.  
 14 Q. Do you see that?  
 15 A. Yes, I do.  
 16 Q. Has Mr. Charles expressed  
 17 that sentiment to you?  
 18 A. Not necessarily in -- in  
 19 that language.  
 20 Q. In what language did he?  
 21 A. It was just very vague  
 22 about how it was calculated. What --  
 23 you know, more so about I guess how  
 24 things were enacted.

Page 134

Page 136

1 Q. In what way?

2 A. Meaning, you know, the  
3 grandfathering and things of that  
4 nature more than the calculation.

5 Q. Okay. So what Mr. Charles  
6 complained to you about is that he  
7 wasn't among the people given  
8 grandfather benefits and he wasn't --  
9 right?

10 A. He was not grandfathered?

11 Q. Right. That was his  
12 complaint to you.

13 A. If you can call it a real  
14 complaint. He's not really a  
15 complaining type of individual, but  
16 there was some very brief  
17 conversation with -- with Mike that  
18 that was one of his sticking points.

19 Q. What were his other  
20 sticking points?

21 A. I can't really say that --  
22 other than that, that's all I really  
23 took away from it. Didn't  
24 necessarily -- I don't have a daily

1 A. Grandfathering and total --  
2 total lump sum.

3 Q. Anything else?

4 A. No.

5 Q. When you say "total lump  
6 sum," you're referring to the total  
7 lump sum you believe that you would  
8 get in a cash balance plan as  
9 compared to the total lump sum that  
10 you believe you would have gotten if  
11 the old Atlantic City plan had  
12 continued?

13 A. That's correct.

14 Q. If it were to turn out that  
15 your lump sum would be higher upon  
16 retirement in the cash balance plan  
17 than in the -- than if the old  
18 Atlantic City plan had continued, do  
19 you believe that you would have  
20 benefited from the conversion to the  
21 cash balance plan?

22 A. Retirement age changed.

23 Q. Assuming you're retiring at  
24 age 65 for purposes of my question.

Page 135

Page 137

1 working relationship with Mr.  
2 Charles.

3 He's in another part of the  
4 service territory. It's very rare  
5 that I would have a conversation with  
6 him.

7 I would bump into him maybe  
8 if I had to do something in an  
9 adjacent work region, or maybe  
10 because of the nature of his position  
11 earlier on, before probably even --  
12 or right around the merger time, I  
13 might have to have some service  
14 provided through a metering  
15 department for something that he  
16 needed done.

17 Q. Did Mr. Ward ever express  
18 to you any sticking points about the  
19 cash balance plan?

20 A. Other than the total  
21 dollars, no.

22 Q. And sitting here today, do  
23 you have any sticking points about  
24 the cash balance plan?

1 A. I would think that would be  
2 a detriment to me as opposed to being  
3 able to retire at 55.

4 Q. When you say able to retire  
5 at 55, you mean able to retire with  
6 full pension benefits at age 55,  
7 right?

8 A. Right.

9 MR. BASSMAN: This is  
10 actually a good stopping point for  
11 where I am, so why don't we take a  
12 lunch break now.

13 MR. SAUDER: Okay.

14 (Luncheon recess at  
15 12:23 p.m.)

16 (Testimony resumed at  
17 1:24 p.m.)

18 MR. BASSMAN: Back on the  
19 record.

20 BY MR. BASSMAN:

21 Q. Good afternoon, Mr. Fink.

22 A. Good afternoon.

23 Q. I wanted to start this  
24 afternoon by following up on a couple



Page 138

Page 140

1 of small items to just to make sure I  
2 have the facts straight here.

3 You testified earlier  
4 today, Mr. Fink, that you read the  
5 Philadelphia Daily News; is that  
6 right?

7 A. Yes.

8 Q. Do you read that newspaper  
9 every day?

10 A. Frequently. I won't say  
11 every day but several times a week.

12 Q. At least three times a week  
13 usually?

14 A. Probably.

15 Q. And for how long has it  
16 been your practice to read the  
17 Philadelphia Daily News at least  
18 three times a week?

19 A. For some time, very long  
20 time.

21 Q. More than ten years?

22 A. Yes.

23 Q. You are aware that Mr.  
24 Charles and Mr. Ward were both

1 would say at least having it looked  
2 at in some fashion.

3 Q. Why did you want to have it  
4 looked at?

5 A. I just -- well, it was  
6 something that I always felt that was  
7 beyond my span of control. It was  
8 not -- it was hearsay and I always --  
9 and use those type of terms because I  
10 was not really party to any  
11 organized, structured, you know,  
12 dissemination of any information  
13 about this. Was really -- I'm just  
14 trying to find the right words.

15 Well, ask me the question  
16 again.

17 Q. Sure. You testified that  
18 before you went to see Mr. Malone you  
19 were thinking about contacting a  
20 lawyer to have issues regarding the  
21 cash balance plan looked at.

22 A. Uh-huh.

23 Q. And the question was, why  
24 did you want a lawyer to look at

Page 139

Page 141

1 deposited in this case earlier this  
2 week?

3 A. Yes, that's my  
4 understanding.

5 Q. Have you spoken to Mr.  
6 Charles about his deposition?

7 A. No.

8 Q. Have you spoken to Mr. Ward  
9 about his deposition?

10 A. No, I have not.

11 Q. Have you spoken to Mr.  
12 Troup about his deposition tomorrow?

13 A. No. I've never spoken with  
14 Mr. Troup. Wouldn't know him if he  
15 walked in here.

16 Q. You described this morning  
17 calling Mr. Malone after you met with  
18 Mr. Ward. Before you met with Mr.  
19 Malone, you had given any thought to  
20 suing Conectiv about the cash balance  
21 plan?

22 A. I thought about at least  
23 seeking legal advice. I don't know  
24 if I would say suing them, but I

1 those issues?

2 A. I always felt, I guess,  
3 ultimately, that it was something I  
4 was never sure if it was in my best  
5 interest. It was something more or  
6 less, mostly more, imposed upon the  
7 management employees, and the  
8 speculation was that it was going to  
9 be something that was going to be  
10 unilateral across all the working  
11 levels, which never happened. They  
12 immediately balked and didn't want to  
13 have anything to do with it.

14 Q. When you say they balked,  
15 do you mean the unions?

16 A. Yes.

17 Q. And so the union members  
18 have never been converted to a cash  
19 balance plan?

20 A. No. And I believe they  
21 attempted to do that this last  
22 contractual negotiation yet again and  
23 it was not successful.

24 Q. And that would be the

Page 142

Page 144

1 contractual negotiation between  
 2 Conectiv and Local 210?  
 3 A. Yes.  
 4 Q. And what do you know about  
 5 those negotiations?  
 6 A. Little. Less than I  
 7 normally do. As I get more seniority  
 8 or longevity in the management side  
 9 of the corporation, I know less about  
 10 the local.  
 11 I do know some local  
 12 officials from my time there and in  
 13 passing, you know, comments were  
 14 made, you know, back and forth or  
 15 just very brief, you know, one  
 16 liners.  
 17 Q. Do you remember what the  
 18 substance of those comments were?  
 19 A. Along the lines of we're  
 20 not taking that pension plan; you  
 21 guys can keep that thing.  
 22 Q. Did they tell you why they  
 23 didn't want to take it?  
 24 A. I didn't really -- it's one

1 and they were subsequently -- this  
 2 past negotiation was the first time  
 3 in 20 years I saw picketers on our  
 4 property.  
 5 Q. And were there signs that  
 6 the picketers held up?  
 7 A. Well, yes. It was not  
 8 specific to this pension. It was --  
 9 it was an open situation for wages  
 10 and benefits.  
 11 Q. So none of the signs  
 12 referred to the cash balance plan?  
 13 A. No. No.  
 14 Q. Were the picketers handing  
 15 out leaflets or any kind of  
 16 information?  
 17 A. Not related to specifically  
 18 naming the cash balance as any  
 19 problem.  
 20 Q. So you had testified  
 21 earlier that you always felt that the  
 22 cash balance plan might not be in  
 23 your best interest, right?  
 24 A. Unless I was 20 years old

Page 143

Page 145

1 of those, you know, in the hallway,  
 2 you know, in a tunnel type of thing,  
 3 you know, in passing it was, yeah,  
 4 well, it is what it is for us; it's  
 5 different, you know.  
 6 Q. So the union officials  
 7 didn't offer a reason and you didn't  
 8 ask them?  
 9 A. No. And it's been their  
 10 position, or the position that  
 11 they're actually in, I should say, is  
 12 that it's negotiable for them;  
 13 there's no negotiating for us. It's  
 14 beyond my span of control. It's  
 15 something that I had to accept  
 16 whether I liked it or not.  
 17 Q. When did you find out that  
 18 Local 210 had rejected the cash  
 19 balance plan?  
 20 A. That was some time ago.  
 21 There had been talks back and forth  
 22 from what I understood of previous  
 23 negotiations about attempting to get  
 24 them to roll it into the cash balance

1 and wanted to work five years and use  
 2 that portability.  
 3 Q. And for a person like that  
 4 it could be in their best interest?  
 5 A. I would surmise, yes,  
 6 that's correct.  
 7 Q. But you are not in that  
 8 position at all?  
 9 A. I wish I was in that  
 10 position. I'd be 25 years younger.  
 11 Q. You testified earlier I  
 12 believe that you contacted Mr. Malone  
 13 in 2005 for the first time.  
 14 A. I believe that's correct.  
 15 Towards the second half.  
 16 Q. Is there any reason you  
 17 didn't contact an attorney earlier?  
 18 A. There had been some  
 19 speculation that individuals were  
 20 making those attempts, and I don't  
 21 know who they were or what level of  
 22 activity they were pursuing, but they  
 23 were encountering some difficulty  
 24 finding someone who didn't have a

Page 146

Page 148

1 conflict of interest.

2 Q. And do you remember how you  
3 heard about these attempts to find a  
4 lawyer by other employees?

5 A. No. I can't honestly say  
6 that I do.

7 Q. Do you remember  
8 approximately what year you heard  
9 about those attempts?

10 A. It may have been just in  
11 the early portion or the first half  
12 of 2005. It wasn't like it was  
13 ancient history.

14 Q. Since this lawsuit has been  
15 filed, have any Conectiv employees  
16 approached you to talk about it?

17 A. Not with respect to detail.

18 Q. Well, how about at all?  
19 Anybody ask you at all about the  
20 lawsuit?

21 A. They may say things like  
22 I'm glad someone's doing something,  
23 things of that nature, but most of  
24 them have the sensibility, I'm sure,

1 A. 1997.

2 Q. And how did you discover  
3 that Conectiv was sending mailings to  
4 her address instead of yours?

5 A. Well, sometimes she would  
6 say that I had mail there. And there  
7 would certainly be gaps of time when  
8 she would say nothing and I'm sure it  
9 just went (indicating).

10 Q. Do you remember the first  
11 time your ex-wife told you that she  
12 had some of your mail from Conectiv?

13 A. I believe I left that  
14 premise in October of '97 to where  
15 I'm currently residing. Somewhere in  
16 that time frame, you know, subsequent  
17 to that, maybe November, December.

18 Q. Towards the end of 1997?

19 A. '97 into '98, that's  
20 correct.

21 Q. Okay. What steps did you  
22 take to remedy the problem?

23 A. Well, I changed my address,  
24 at least I thought I did, and I'm not

Page 147

Page 149

1 that you're not supposed to discuss  
2 anything.

3 I've actually had people  
4 say that to me, but I'm glad  
5 somebody's at least looking at this.

6 Q. Did you ask any of your  
7 fellow employees if they would be  
8 willing to join the lawsuit as a  
9 plaintiff?

10 A. No.

11 Q. You testified this morning  
12 that there had been some problems  
13 with Conectiv sending you mail  
14 because Conectiv mailings had been  
15 sent to your ex-wife's address. Do  
16 you recall that testimony?

17 A. Yes, I do.

18 Q. Just want to see if I have  
19 the facts straight there. First, and  
20 obviously I don't want to delve into  
21 the details of any of this, but just  
22 for purposes of a time line, when did  
23 you and your former wife cease to  
24 live together?

1 sure what happened. On more than one  
2 occasion old addresses have come --  
3 two weeks ago everybody's paycheck  
4 came back with -- all my direct  
5 reports -- in places they lived 20  
6 years ago on the envelopes. No rhyme  
7 or reason.

8 I mean, that was long  
9 before either merger, so I don't know  
10 what goes on in IT or IS, or whatever  
11 they call themselves nowadays,  
12 information systems, information  
13 technologies.

14 Q. Now, when you say you  
15 changed your address, did you inform  
16 someone at Conectiv that you had a  
17 new address?

18 A. Yes.

19 Q. Who?

20 A. I don't recall who.  
21 There's -- there's profiles that they  
22 would -- you know, I might have even  
23 just told a clerk that was in my  
24 office at that time. I had a

Page 150

Page 152

1 clerical staff that reported to me in  
2 my office.

3 Q. And I think you mentioned  
4 that as recently as this past year in  
5 2006 a Conectiv mailing had gone to  
6 your ex-wife?

7 A. Yes. About stock dividends  
8 from an old stock program.

9 Q. How did you find out about  
10 that mailing going to your ex-wife?

11 A. My daughter.

12 Q. Does your daughter live  
13 with your ex-wife?

14 A. She was briefly.

15 Q. So your daughter called you  
16 up and told you?

17 A. She just brought it to my  
18 house.

19 Q. And what did you do after  
20 you found out that that mailing went  
21 to your ex-wife's address?

22 A. I looked at it and realized  
23 it was relatively of no consequence  
24 or minimal consequence to me. It

1 Q. And --

2 A. Well, excuse me. Meaning  
3 credit union statements that are not  
4 really that type of information that  
5 you're referring to. Other personal  
6 information that would come from the  
7 corporation.

8 Q. And did you have a standard  
9 practice as to what steps you would  
10 take to correct the mislabeling of  
11 your address after you found out each  
12 time that a piece of mail had gone to  
13 your ex-wife's address?

14 A. Well, for when you're  
15 talking about mail that's coming from  
16 the corporation, it's -- it's  
17 generally speaking as this whole  
18 thing has unfolded from the first  
19 merger, was one thing when I would  
20 contact HR or a clerical support  
21 person in HR for Atlantic City, but  
22 then when we became Conectiv, more  
23 and more of these functions got split  
24 up and pushed out into contract

Page 151

Page 153

1 didn't revolve around any giant  
2 moneys or anything, and it appeared  
3 to be done by a contractor that  
4 they've hired to administer that  
5 program.

6 Q. Did you call anyone at  
7 Conectiv after your daughter brought  
8 you that piece of mail?

9 A. No. There is no Conectiv  
10 to call, per se. I would have to  
11 call someone in Atlantic City, and it  
12 would go back to that contractor who  
13 is maybe in Washington.

14 Q. I assume between the first  
15 time that your ex-wife told you she  
16 got some of your mail in late '97,  
17 early '98, and this most recent  
18 incident where your daughter brought  
19 the mailing to you last year, in  
20 between those two times, to the best  
21 of your knowledge, have other pieces  
22 of Conectiv mail been sent to your  
23 ex-wife's address?

24 A. Yes.

1 areas.

2 So I can't say that I had  
3 any routine for taking care of it,  
4 no. It's just you had to call and  
5 give it your best shot with whoever  
6 it is you thought you had to call.

7 Q. And each time you found out  
8 that mail had been improperly sent to  
9 your ex-wife's address instead of  
10 your own address by Conectiv, you  
11 placed a phone call to try to remedy  
12 the situation?

13 A. Yes. As long as I knew  
14 that there was something of grave  
15 importance. I'm not talking about  
16 statements from a dental plan. I'm  
17 talking about things that would be  
18 related to my employment.

19 Q. And you would place a phone  
20 call, I just want to be clear, not  
21 send an e-mail or write a letter or  
22 something like that?

23 A. No. The reality, back in  
24 '97 and '98, there was not -- there

Page 154

Page 156

1 was electronic e-mail, but there was  
2 not a plethora of the systems that we  
3 have now. The whole arena has  
4 evolved, as you well know, remarkably  
5 in the last ten years.

6 Q. You mentioned earlier that  
7 you had heard about Local 210  
8 repeatedly rejecting the cash balance  
9 plan. Did you ever hear about any  
10 dispute between Local 210 and  
11 Conectiv about the interest rate that  
12 should be used to calculate lump sum  
13 payments under the old Atlantic City  
14 plan?

15 A. I may have, now that you  
16 brought that up. There may have been  
17 some -- some kind of rhetoric I heard  
18 in passing and didn't pay any  
19 attention to it because it really  
20 didn't affect me at this time. They  
21 may have used the wrong rate at one  
22 point. I can't really say. It could  
23 be just really gossip.

24 Q. And this would, again, be

1 like, and, again, I'm talking about  
2 your ideal form of relief that you  
3 would get from the court, is that for  
4 everybody who started, you know,  
5 before 1999 roughly, to go back, to  
6 have their pensions go back under the  
7 old Atlantic City plan, right?

8 A. Yes.

9 Q. Anybody who's come to work  
10 for Conectiv after the ACE DelMarVa  
11 merger, you have no objection to them  
12 remaining in the cash balance plan?

13 A. I may have no objection?

14 They may have no objection, but I  
15 would not have an objection.

16 Q. Do you feel like the  
17 interest of employees who started  
18 before the ACE DelMarVa merger and  
19 those who started after are the same  
20 in regards to the cash balance plan?

21 A. They're similar in nature.

22 Q. Are they different at all?

23 A. Well, there's no  
24 grandfathering basically for those

Page 155

Page 157

1 gossip from your acquaintances who  
2 are officials in the Local?

3 A. Yes.

4 Q. If you win this lawsuit,  
5 Mr. Fink, what would you like the  
6 court to do?

7 A. What would I like the court  
8 to do?

9 Q. Yeah.

10 A. My personal spin on that,  
11 I would like to see some change in  
12 the -- well, ideally, I'd like for  
13 everybody to be made whole. Meaning  
14 those of us that were pre-merger  
15 hires, not anybody that's  
16 subsequently been hired by this  
17 newly-formed corporation, go back  
18 into the existing Heritage plans,  
19 DelMarVa, Atlantic.

20 It's interesting that Pepco  
21 elected not to do anything with their  
22 Heritage plan on this last merger  
23 other than retain it.

24 Q. So what you would ideally

1 people, so that is an issue.

2 However, I mean, we all know that  
3 there's portability for them. But  
4 other than that, there are some  
5 subtle differences, but there are  
6 other things that are unchanged, caps  
7 at 650 percent of a five-year average  
8 salary. That would remain unchanged.

9 Q. So you think that for the  
10 employees who are hired after the ACE  
11 DelMarVa merger, they also have an  
12 interest in seeing the cash balance  
13 plan declared illegal and the old  
14 Atlantic City plan put back in its  
15 place?

16 A. If I was in that particular  
17 boat, that would be the direction I'd  
18 be rowing.

19 Q. How come?

20 A. Just based on what I've  
21 said all along, 650 percent cap for  
22 starts.

23 Q. Anything else?

24 A. I'm not convinced what

Page 158

Page 160

1 happens to the total lumps and, you  
 2 know, how they mature, how it's  
 3 accrued. There just seems to be too  
 4 big a difference when I hear people  
 5 that have 600,000 in their, you know,  
 6 that are grandfathered at this  
 7 moment, and guys that aren't  
 8 grandfathered they're not really -- I  
 9 mean, they're so close in years of  
 10 service and not -- you know, they're  
 11 very close in age that didn't make  
 12 the cutoff and the discrepancy is too  
 13 large. You're talking well over,  
 14 well over \$100,000 in some cases.  
 15 That's a lot of money when you're  
 16 going to retire.

17 Q. Under the old Atlantic City  
 18 plan, do you have any understanding  
 19 as to how under that plan lump sum  
 20 payments were calculated?

21 A. Very, very vague.

22 Q. What is your --

23 A. There was a -- there was a  
 24 multiplier that was a variable from

1 A. Yes.

2 Q. Do you know if that  
 3 government multiplier was the same  
 4 every year?

5 A. It's my understanding it  
 6 was variable slightly.

7 Q. So if -- hypothetically,  
 8 let's say you have two employees,  
 9 call them A and B. Both have the  
 10 same number years of service, same  
 11 salary history, they're identical in  
 12 every way, they're both under the old  
 13 Atlantic City plan, one retires in  
 14 2000, one retires in 2002. Following  
 15 me so far?

16 A. Uh-huh. Yes.

17 Q. It's possible that even  
 18 though their years of service and  
 19 salary histories are identical, their  
 20 lump sum payments on the old Atlantic  
 21 City plan could be different because  
 22 the government multipliers could have  
 23 been different in those different  
 24 years, right?

Page 159

Page 161

1 the government set that was your  
 2 multiplier for your years of service.  
 3 There was an averaging of your  
 4 salary. So, I mean, there's an  
 5 overall understanding. I can't tell  
 6 you it's, you know, an absolute  
 7 understanding.

8 Q. Ever heard the phrase PBGC  
 9 rate?

10 A. No.

11 Q. Doesn't ring a bell?

12 A. No. Not -- that acronym  
 13 does not ring a bell, no.

14 Q. Did you ever hear anything  
 15 about under the old Atlantic City  
 16 plan the use of interest rates to  
 17 calculate lump sum payments?

18 A. Well, that would be the --  
 19 would that not be the multiplier that  
 20 the government supplied?

21 Q. Okay. When you meant the  
 22 government multiplier you were  
 23 referring to the interest rate  
 24 calculations?

1 A. It's my understanding that  
 2 that is possible in a very minimal  
 3 sense.

4 Q. But it is possible?

5 A. Yes.

6 Q. And, of course, you're not  
 7 an actuary?

8 A. No, I'm not.

9 Q. And, I mean, obviously you  
 10 understand that these calculations  
 11 are very difficult.

12 A. Yes, they are, I'm sure.

13 Q. So when you say minimal,  
 14 are you really just guessing as to  
 15 whether they're minimal or do you  
 16 have some basis?

17 A. I'm just basing this on the  
 18 numbers that I've heard peoples  
 19 espouse over the years that have  
 20 separated under the Heritage plan.

21 Q. Okay.

22 A. Based on what I know about  
 23 them for age and service length.

24 Q. And is it your



Page 162

Page 164

1 understanding that to figure out the  
2 lump sum payment that you get under  
3 the cash balance plan, all you have  
4 to do is look at your account  
5 balance?

6 A. Would you repeat that  
7 again?

8 Q. Sure. If you wanted to  
9 figure out what your lump sum payment  
10 on retirement would be from the cash  
11 balance plan, all you have to do is  
12 look at your account balance?

13 A. Basically, that's correct.

14 Q. And we looked earlier at  
15 some statements you got from Vanguard  
16 that showed your account balance here  
17 by year. Do you recall that?

18 A. Yes, I do.

19 Q. I'd like to just pull those  
20 out again. It was Defendant's  
21 Exhibit 31, which I'm handing over to  
22 you right now. If you could just  
23 flip through your Vanguard statements  
24 year by year, Mr. Fink, and confirm

1 A. That's also correct.

2 Q. For the old Atlantic City  
3 plan, did you have any understanding  
4 that the amount of annuity payment  
5 you get each year would be some  
6 factor of number times your average  
7 pay times your years of service?

8 A. That was part of the high  
9 level outline I told you was in the  
10 handbook.

11 Q. And so under that formula  
12 under the old Atlantic City plan,  
13 when you retired, no matter which  
14 year you retired, if you have the  
15 same salary and years of service, you  
16 know, whether you retired in 2001,  
17 2002, 2003, your annuity payment will  
18 be the same, right?

19 MR. SAUDER: Can you repeat  
20 the question?

21 BY MR. BASSMAN:

22 Q. Sure. Let me rephrase  
23 that. I think that was a little  
24 confusing.

Page 163

Page 165

1 for me that every year your ending  
2 account balance increased.

3 A. That's correct.

4 Q. Do you have any  
5 understanding as to how if an annuity  
6 would be calculated under the old  
7 Atlantic City plan, if you opted to  
8 take your retirement benefit as an  
9 annuity?

10 A. No. I would have no  
11 knowledge whatsoever.

12 Q. Same question under the  
13 cash balance plan. Any idea if you  
14 opted to take your benefits there as  
15 an annuity, how the annuity would be  
16 calculated?

17 A. I believe that's part of  
18 the Estimator.

19 Q. So you would find out by  
20 looking on the Estimator?

21 A. That's correct.

22 Q. But you don't personally  
23 know how the Estimator comes up with  
24 the number?

1 One of the things we talked  
2 about earlier is you mentioned under  
3 the old Atlantic City plan, because  
4 the government multiplier changes  
5 from year to year, two employees with  
6 the exact same years of service and  
7 salary history could get different  
8 lump sum payments depending on which  
9 calendar year they retired in.

10 A. Yes.

11 Q. My only question was, if  
12 you take those same two hypothetical  
13 people again, same exact salary  
14 history, same exact number of years  
15 of service, one retires in 2000, one  
16 retires in 2002, they're both under  
17 the old Atlantic City plan, they both  
18 opt to have their pensions paid as an  
19 annuity, isn't it correct that the  
20 annuity would be identical for both  
21 of them?

22 MR. SAUDER: Objection.

23 THE WITNESS: No.

24 BY MR. BASSMAN:

Page 166

Page 168

1 Q. Why not?  
 2 A. Length of service is part  
 3 of the multiplier.  
 4 Q. Oh, no. I'm assuming that  
 5 they have the same length of service.  
 6 A. Okay. I'm sorry. You did  
 7 say that. You said they would be  
 8 equal. And your -- and your synopsis  
 9 of that was again...?  
 10 Q. Is it correct that they'd  
 11 be equal?  
 12 A. Not necessarily.  
 13 Q. Why not?  
 14 A. Could very well be a minor  
 15 percentage because of the interest.  
 16 Q. Okay. One of the things we  
 17 went over this morning if you recall  
 18 was the fact that there's an interest  
 19 credit that's added to your account  
 20 balance in the cash balance plan each  
 21 year.  
 22 Do you remember that  
 23 discussion?  
 24 A. Yes.

1 consecutively.  
 2 Q. And it would benefit you if  
 3 it went up, right?  
 4 A. Yes.  
 5 Q. And you wouldn't be able to  
 6 figure out whether the interest rate  
 7 fluctuations in the end benefit you  
 8 or harm you until you retire, right?  
 9 MR. SAUDER: Objection. If  
 10 you understand the question and  
 11 figure out a calculation, you can  
 12 answer it.  
 13 THE WITNESS: I can't do  
 14 that.  
 15 BY MR. BASSMAN:  
 16 Q. Sure. Let me break it down  
 17 for you a little. As you testified,  
 18 sometimes interest rates can go down,  
 19 right?  
 20 A. Yes, I did.  
 21 Q. And when the interest rates  
 22 go down, the percentage interest  
 23 credit that gets added to your cash  
 24 balance plan is going to be lower.

Page 167

Page 169

1 Q. And that that interest  
 2 credit is pegged to the treasury  
 3 rate?  
 4 A. Yes.  
 5 Q. And is it your  
 6 understanding that the treasury rate  
 7 changes each year, right?  
 8 A. Yes.  
 9 Q. So that the percentage  
 10 interest credit will shift year to  
 11 year; correct?  
 12 A. Correct.  
 13 Q. Do you believe that the  
 14 fact that -- and I ask this question  
 15 leaving aside any discussions you may  
 16 have with your lawyers, you know,  
 17 outside of discussions with  
 18 counsel -- do you believe that the  
 19 use of a varying interest rate each  
 20 year harms you?  
 21 A. It certainly could.  
 22 Q. Because the interest rate  
 23 could go down one year, right?  
 24 A. Or it could go down

1 A. That's correct.  
 2 Q. And the reverse is also  
 3 true. If interest rates go up, that  
 4 percentage interest credit goes up,  
 5 right?  
 6 A. I would believe so.  
 7 Q. Which means your money will  
 8 be credited to your cash balance  
 9 account at a higher rate than in the  
 10 year before if the interest rate goes  
 11 up?  
 12 A. I would believe that to be  
 13 correct also.  
 14 Q. So my question for you is,  
 15 over the course of time, as interest  
 16 rates are going up or down, you won't  
 17 be able to know whether at the end of  
 18 the day when you take your money out  
 19 of the plan in a lump sum payment the  
 20 interest rates going up and down hurt  
 21 you or benefit you, you know, until  
 22 it's all over?  
 23 MR. SAUDER: Objection.  
 24 THE WITNESS: I'm not --

Page 170

Page 172

1 I'm not following you with that whole  
2 line of questioning. I mean, I  
3 think -- I think I know where you're  
4 going, but I'm not positive.

5 BY MR. BASSMAN:

6 Q. Tell me where you think I'm  
7 going.

8 MR. SAUDER: Objection. I  
9 object to that.

10 BY MR. BASSMAN:

11 Q. Please go ahead.

12 A. I don't -- let me give you  
13 what I believe is -- would be my  
14 answer. Let me give you my answer.

15 MR. SAUDER: Okay. I'm  
16 going to object. I just ask you to  
17 rephrase the question so that he's  
18 not giving an answer to something  
19 that he thinks he's answering to a  
20 question he doesn't quite understand.

21 MR. BASSMAN: My  
22 understanding right now is that Mr.  
23 Fink's explaining to me what he does  
24 not understand in my question so I

1 interest rates, you know, go up 15  
2 times. That, of course, would result  
3 in a higher interest crediting rate  
4 that year; correct?

5 A. Yes.

6 Q. Over the course of those  
7 two years you may wind up with more  
8 money than if the interest rates  
9 hadn't been allowed to fluctuate at  
10 all, right?

11 A. In theory, yes.

12 Q. So my point would be, and  
13 this is all I was trying to drive at,  
14 that you can't really tell how the  
15 ups and downs of interest rates will  
16 affect your final payment as compared  
17 to just the static interest rate  
18 until you take your money out of the  
19 plan and you see how everything  
20 performed over time.

21 Would you agree with that  
22 conclusion?

23 A. No. I still go back and  
24 say I could see it on an annual

Page 171

Page 173

1 can rephrase it.

2 MR. SAUDER: Is that what  
3 you're doing?

4 THE WITNESS: Yes.

5 What you're basically  
6 asking me is I won't be able to tell  
7 until the day I retire if I've been  
8 harmed by a fluctuation in interest  
9 rates in the cash balance plan?

10 BY MR. BASSMAN:

11 Q. That's exactly what I'm  
12 asking.

13 A. No. I'll know before that,  
14 because I'll be able to look at an  
15 annual statement.

16 Q. So let's take an example  
17 and make this a little more concrete.

18 Assume next year that  
19 interest rates fall in half. In that  
20 case the fluctuating interest rates  
21 will hurt you, right?

22 A. Yes.

23 Q. Let's say, then, the year  
24 after the economy goes haywire,

1 basis. The only thing that I would  
2 not be able to see is the final year.

3 Q. Okay. But --

4 A. Because I'm taking my money  
5 when -- I'm taking my money in that  
6 final year and when my statement  
7 comes at the end of that year then I  
8 would know, but I'm retiring so the  
9 curtain has been closed.

10 On an annual -- with an  
11 annual statement I can tell what --  
12 what is happening over and over  
13 again, year in, year out.

14 Q. Under the old Atlantic City  
15 plan, do you have an understanding  
16 that -- you're today you said 52  
17 years old?

18 A. Yes.

19 Q. Okay. And I apologize this  
20 question is a little morbid. But if  
21 you were covered by the old Atlantic  
22 City plan and you were to die today,  
23 what is your understanding as to what  
24 would happen to your pension

Page 174

Page 176

1 benefits?  
 2 A. Under the old plan?  
 3 Q. Under the old plan.  
 4 A. There's no surviving  
 5 benefits, survivor benefits.  
 6 Q. And same question, but this  
 7 time under the cash balance plan. If  
 8 you were to die today, what happens  
 9 to your benefits under the cash  
 10 balance plan?  
 11 A. That lump sum goes to  
 12 whoever the designated person is.  
 13 Q. Like in a 401(k)?  
 14 A. That's correct.  
 15 Q. Do you view that enhanced  
 16 survivor benefit as a positive  
 17 feature of the cash balance plan?  
 18 A. One could interpret that as  
 19 being a positive.  
 20 Q. For example, if there were  
 21 a 30-year-old employee who was  
 22 diagnosed with a terminal illness,  
 23 wouldn't that person be better off  
 24 with a cash balance plan with

1 view the plan as discriminating on  
 2 the basis of age?  
 3 A. No.  
 4 Q. Let's take each one of  
 5 those starting with the  
 6 grandfathering. Who are the victims  
 7 of age discrimination when it comes  
 8 to grandfathering?  
 9 A. All those people that were  
 10 long-term employees that were not 50  
 11 years old at the particular time the  
 12 cash balance was instituted.  
 13 Q. So younger long-term  
 14 employees were the victims?  
 15 A. The middle ground people.  
 16 Not the real young ones that would  
 17 probably benefit from cash balance.  
 18 The ones that are in between, the  
 19 Mike Charles type of guys that were  
 20 very close and didn't -- had fell  
 21 slightly short for years of service  
 22 or months short in age that are  
 23 stranded.  
 24 Q. Now, you said the real

Page 175

Page 177

1 survivor benefits that could help  
 2 support their family than under the  
 3 old Atlantic City plan?  
 4 A. Possibly.  
 5 Q. Do you understand that one  
 6 of the allegations in your Complaint  
 7 is that the cash balance plan  
 8 discriminates on the basis of age?  
 9 A. Yes.  
 10 Q. How do you understand the  
 11 cash balance plan discriminates on  
 12 the basis of age?  
 13 A. The same dollar that  
 14 somebody would put in at 25 years old  
 15 does not necessarily represent the  
 16 same thing for somebody at 40 years  
 17 old when you multiply it all the way  
 18 out.  
 19 There's also, in my mind,  
 20 which might not be necessarily  
 21 correct, I look at the age  
 22 discrimination thing goes back to  
 23 grandfathering for me.  
 24 Q. Any other ways that you

1 young people benefit from the cash  
 2 balance plan?  
 3 A. I don't know if I said the  
 4 real young people benefit, but what  
 5 we have said earlier in this  
 6 conversation is that there's  
 7 circumstances that would possibly be  
 8 more beneficial to them, portability,  
 9 those type of things.  
 10 Q. So for some real young  
 11 people, some of them may be better  
 12 off in the cash balance plan than the  
 13 old Atlantic City plan?  
 14 A. In my mind if we're talking  
 15 about mobility, portability, or if  
 16 we're talking about dollars.  
 17 Q. If you wanted to figure out  
 18 if the cash balance plan or the old  
 19 Atlantic City plan was better for a  
 20 young person -- by young I mean, say,  
 21 someone under 30 -- do you believe  
 22 that you would have to sit down and  
 23 talk with that person and find out  
 24 what their particular goals and plans

Page 178

Page 180

1 are?

2 A. I would imagine it would be  
3 beneficial. I mean, you're making a  
4 decision for somebody that you have  
5 no knowledge of what their  
6 aspirations are. Maybe they have a  
7 desire to work for five years.

8 Maybe -- maybe they're of  
9 the mindset that they'd like to have  
10 a long-term career in that  
11 particular, you know, position that  
12 they're in, or in that particular  
13 company that they're in.

14 Q. So if you really wanted to  
15 figure out what's in the interest of  
16 any 26-year-old employee of Conectiv  
17 today, the best way to find out would  
18 be to sit down and talk to that  
19 person and find out what their goals  
20 and aspirations are, right?

21 MR. SAUDER: Objection.

22 THE WITNESS: I would  
23 imagine you would have to solicit  
24 some sort of response from them,

1 the grandfather benefits?

2 A. 50 years old or 20 years of  
3 service.

4 Q. At what time? 50 years as  
5 of what date?

6 A. The first of '99.

7 Q. Okay. So for the oldest or  
8 longest serving employees of Conectiv  
9 as of 1999 were the recipients of the  
10 grandfather benefits, right?

11 A. Well, they either had the  
12 age or the years of service. One or  
13 the other.

14 Q. And it's the recipients of  
15 the grandfather benefits who are the  
16 people being discriminated in -- whom  
17 Conectiv was discriminating in favor  
18 of?

19 A. In theory, someone could  
20 work for five years for the  
21 corporation, be 50 years old and be  
22 grandfathered, and I could be 47  
23 years old and have 20 years in and  
24 not be grandfathered. I don't think

Page 179

Page 181

1 verbal, written, or otherwise.

2 BY MR. BASSMAN:

3 Q. Now, going back to  
4 grandfathering, you mentioned that  
5 the middle guys, I assume like you  
6 and Mr. Charles, are the worst off,  
7 right?

8 A. Him more so than me.

9 Q. Why him more so than you?

10 A. He was -- he has longer  
11 service than I. He's older than I  
12 am. He was just very close to  
13 grandfathering and just missed it.

14 Q. Do you consider yourself  
15 one of these middle guys?

16 A. Basically, yes.

17 Q. And the beneficiaries, the  
18 people being discriminated in favor  
19 of, are the older, the oldest  
20 employees, right?

21 A. Can you say that again?

22 Q. Sure. Well, let me ask you  
23 this way. What is your understanding  
24 of the criteria for qualifying for

1 that that's appropriate.

2 Q. And, in fact, in that case,  
3 the company is, in the hypothetical  
4 you gave, the company is  
5 discriminating against you because  
6 you're younger, right?

7 A. In my mind.

8 Q. Now, you also mentioned as  
9 another reason why you think the cash  
10 balance plan is age discriminatory  
11 that the same dollar someone earns at  
12 20 is not going to be the same as a  
13 dollar earned by someone at age 45.  
14 I was wondering if you could just  
15 explain that.

16 MR. SAUDER: Outside any  
17 communications you had with counsel.

18 THE WITNESS: I can't.

19 BY MR. BASSMAN:

20 Q. Okay. So --

21 A. Based on that statement.

22 Q. Okay. So just to be clear,  
23 for that particular theory of age  
24 discrimination, your knowledge only

Page 182

Page 184

1 comes from privileged attorney-client  
2 communications?

3 A. Yes.

4 Q. Okay. And that did not  
5 occur to you as a basis for thinking  
6 the plan was age discriminatory  
7 before you spoke to Mr. Malone?

8 A. I can't say that there was  
9 not some -- some very brief espousing  
10 by someone. That someone could very  
11 well have been Michael. I can't  
12 recall. But it was not something  
13 that was necessarily -- that I was  
14 grasping at the time.

15 Q. Okay. Earlier this  
16 morning, as I'm sure you recall, we  
17 took a long time going through a  
18 large number of documents about the  
19 cash balance plan.

20 Do you remember that?

21 A. Yes, I do.

22 Q. Based on your review of  
23 those documents this morning, did it  
24 strike you that the documents omitted

1 do you believe that those documents  
2 should have explained that certain  
3 aspects of the cash balance plan  
4 weren't in your best interest?

5 A. I think that there should  
6 have been some better documentation.  
7 There's things in those documents  
8 that I had never seen until today.  
9 The cap, for instance, which is  
10 something that I surmise is very  
11 detrimental to me in my particular  
12 case.

13 And I would -- if -- if  
14 these documents had some -- or if the  
15 corporation had some mechanism for  
16 signing for these documents, or some  
17 way of -- some accountability for  
18 these sessions that they say existed,  
19 and then I see in some cases where  
20 they were rescheduled and I see  
21 locations there that I'm not sure  
22 even were active, which may have  
23 caused the rescheduling.

24 You have to understand this

Page 183

Page 185

1 any information that you felt should  
2 have been included in a notice to  
3 Conectiv employees that would explain  
4 how the cash balance plan works?

5 MR. SAUDER: Objection to  
6 the form. We looked at 30-some  
7 documents. I don't know what  
8 documents you're referencing.

9 MR. BASSMAN: All of them.  
10 Anything he thought that he didn't  
11 see in any one of them, you know,  
12 that should have been in there.

13 MR. SAUDER: Objection to  
14 form and objection to the fact that  
15 it may call for a legal opinion by a  
16 lay witness. But to that extent you  
17 can answer the question.

18 THE WITNESS: I saw things  
19 that I didn't think were in my best  
20 interest in those documents, but I  
21 don't know that there's anything  
22 illegal.

23 BY MR. BASSMAN:

24 Q. And if it were up to you,

1 is merger related, the closing of  
2 these facilities and the movement of  
3 these people. If there had been  
4 better accountability from whatever  
5 group of individuals in the  
6 corporation, whether it was the  
7 senior leadership team or whoever was  
8 functioning on their behalf, or  
9 whatever HR team was doing this, with  
10 respect to how this information was  
11 disseminated to you, to me, to  
12 whomever.

13 In other words, did you get  
14 a document back from Joseph Fink  
15 saying he signed and accepted  
16 delivery of these or if he elected to  
17 throw them out, or if they went to  
18 his ex-wife's home, or wherever they  
19 may have gone, then you would know  
20 that that person had no knowledge of  
21 this -- these activities, but it's a  
22 little more than just me having a  
23 wrong address listed with a  
24 corporation briefly more than once.



Page 186

Page 188

1 There's too many people  
2 that seem to not have been able to  
3 find any of these meetings or be able  
4 to attend these meetings.

5 Q. I want to go back to a  
6 couple things you just said. You  
7 mentioned that the 650 percent cap  
8 was very detrimental to you.

9 A. Yes.

10 Q. I'm just wondering why you  
11 think the 650 percent cap is  
12 detrimental to you.

13 A. Well, it stops the maturity  
14 of that lump sum. It has a cap on  
15 it.

16 Q. Is it your understanding  
17 the cap applies to the lump sum or  
18 that it applies to an annuity  
19 payment?

20 A. Well, to the lump sum.

21 Q. Okay.

22 A. And it very well could be  
23 to the annuity also. I don't have  
24 the expertise to know that.

1 balance plans in 1999 that you saw  
2 referenced in the documents we looked  
3 at this morning.

4 Besides yourself, are you  
5 aware of anyone else who you know of  
6 was not even invited to a meeting in  
7 1999 about the cash balance plan?

8 A. I don't know that anybody  
9 was ever invited in the mannerism  
10 which I think you're suggesting.  
11 There was not a written invitation to  
12 me, or there was not a directive  
13 written to me personally, or to any  
14 one individual to say there's a  
15 meeting here that you need to come to  
16 to have all your questions answered  
17 about cash balance.

18 Or there's a mandatory  
19 meeting for us to forward information  
20 to you so that we can with a clear  
21 conscious say that we have provided  
22 you all the information that we have.  
23 It was more like -- like it was  
24 imposed. Well, not like. It was

Page 187

Page 189

1 Q. Okay. And you mentioned  
2 that before today you had heard about  
3 the 650 percent cap, right?

4 A. Yes.

5 Q. Did you ever ask anyone in  
6 HR Conectiv why that cap was in  
7 place?

8 A. No. I don't believe I  
9 recognized that cap was there until  
10 right around the time I was using  
11 this pension calculator when I  
12 couldn't make it go beyond a certain  
13 point.

14 That's when I was like  
15 there's something wrong. I believed  
16 honestly there was something wrong  
17 with the website software, and then I  
18 realized the -- I believe it may have  
19 been Mr. Ward who told me no, that  
20 there was a cap and that's when I  
21 started to...

22 Q. You also mentioned that too  
23 many people were not able to find out  
24 about the meetings about the cash

1 imposed.

2 Q. Let me change my question  
3 slightly. Are you aware of -- and,  
4 obviously, again, this is all just to  
5 the best of your knowledge.

6 Are you aware of anyone  
7 besides yourself who was an employee  
8 of Conectiv in 1999 who did not  
9 attend a meeting that year about the  
10 new cash balance plans?

11 A. Is there anyone else  
12 besides me?

13 Q. Yeah. That you know of.

14 A. I can't -- I can't say  
15 whether or not they attended a  
16 meeting. No, I can't say that.

17 Q. Okay.

18 A. I can say there's a number  
19 of people that professed that they  
20 don't know anything about it and it  
21 was they weren't sure that there were  
22 meetings and they didn't know if they  
23 missed something, things of nature.  
24 There's more than one person that

Page 190

Page 192

1 should be able to tell you that.

2 Q. Do you remember who told  
3 you things of that nature?

4 A. It could possibly be one of  
5 the clerks that work for me that has  
6 separated.

7 Q. Do you remember the clerk's  
8 name?

9 A. Janet Brent. I can't -- I  
10 can't swear to that, though. I don't  
11 remember. There's -- there's been a  
12 cast of non-union clerical supporting  
13 people, but I just can't -- could  
14 have been -- could have been her.  
15 May not have been her. I've had  
16 various clerks over the years.

17 And, remember, there's only  
18 a very small percentage of people in  
19 my operation that this really  
20 affects. The rest are all in the  
21 Heritage members.

22 Q. Because they're all union  
23 members?

24 A. Absolutely. There's 32

1 understand this. So what he told you  
2 was that if you switched to a  
3 bargaining unit position, you  
4 wouldn't get credit in the union's  
5 plan for your years of service as a  
6 management employee?

7 A. And I would lose my  
8 previous years that had been already  
9 converted.

10 Q. Okay.

11 A. In other words, at some  
12 point when the numbers were closer, I  
13 had given consideration to that, and  
14 as the years -- it's not feasible for  
15 me at this time. Would not be in my  
16 best interest.

17 Q. And if you could just  
18 explain why it would not be in your  
19 best interest.

20 A. Well, I would have -- I'd  
21 be starting another pension from  
22 zero.

23 Q. So you feel that if you  
24 switched --

Page 191

Page 193

1 people working out of that particular  
2 office. There may have been two to  
3 four of us that were non-union.

4 Q. Have you considered  
5 applying for a position that would be  
6 a bargaining unit position again so  
7 that you could be under the old  
8 Atlantic City plan?

9 A. Yes.

10 Q. When did you consider that?

11 A. Off and on. As a matter of  
12 fact, I contacted George Bleazard and  
13 asked him what would happen to my  
14 pension, and he told me it would be  
15 frozen and I would start a new one.

16 Q. So your current benefits  
17 would be frozen in the cash balance  
18 plan and you would start from square  
19 one in the union plan?

20 A. That's what he told me,  
21 yes. I asked him would my moneys be  
22 rolled backwards. He told me no,  
23 that would not be the case.

24 Q. I just want to make sure I

1 A. Growth would not be the  
2 same.

3 Q. Okay. So you feel if you  
4 switch today to a bargaining unit  
5 position, by the time you retire  
6 you'll have less money in pension  
7 benefits than if you just continued  
8 on in the cash balance plan in your  
9 current position?

10 A. It's likely just because of  
11 the pools of money, size of the  
12 funds.

13 Q. When you were considering  
14 whether to go to a bargaining unit  
15 position, did you make any attempts  
16 to figure out what the value of your  
17 pension benefits would be under the  
18 old Atlantic City pension if you  
19 started in a bargaining unit  
20 position, say, tomorrow and retired  
21 at 55 or 65?

22 A. No.

23 Q. Do you understand that one  
24 of the claims in your Complaint is

Page 194

Page 196

1 that the cash balance plan is  
2 illegally backloaded?

3 A. Illegally backloaded  
4 meaning...?

5 Q. Have you ever heard the  
6 term backloading in connection with a  
7 pension plan?

8 A. No. I can't say that I'm  
9 familiar with that term.

10 Q. Is it your understanding  
11 that one of the claims in your  
12 Complaint is that under the cash  
13 balance plan a disproportionately  
14 large amount of your pension benefits  
15 accrue towards the end of your time  
16 as an employee as compared to  
17 beginning?

18 A. Yes.

19 Q. And outside of discussions  
20 with counsel, you know, and obviously  
21 I don't want you to go into that,  
22 outside of what you've discussed with  
23 your attorneys, what is your basis  
24 for believing that that is the case?

1 Do you understand that in  
2 your Complaint in this case you are  
3 asking the court to appoint you as a  
4 representative of a class of other  
5 people?

6 A. Yes.

7 Q. What do you understand your  
8 duties to be as a class  
9 representative?

10 A. To do what would ultimately  
11 would be fair and equitable for the  
12 group. Not necessarily what would be  
13 in my own personal best interest.

14 Q. Do you feel that you could  
15 represent the class if your personal  
16 best interest diverged from what was  
17 best for the group?

18 A. Yes.

19 MR. BASSMAN: At this point  
20 I actually think I'm relatively close  
21 to being done. So why don't we take  
22 a ten-minute break and let me go  
23 through my notes and see if we can  
24 wrap up shortly.

Page 195

Page 197

1 A. The basis for believing  
2 that is we go into those Estimators  
3 and how it -- first off, the cap  
4 comes into play. And this -- at some  
5 point when Mr. Ward discussed with me  
6 that cap that I alluded to just  
7 earlier in this conversation, some  
8 talk between us about a crossover  
9 point.

10 But it appears that most  
11 cases there is no crossover point  
12 because of that cap. In other words,  
13 the crossover point meaning that  
14 there was a possibility that the cash  
15 balance could exceed your Heritage  
16 plan, but based on that cap it  
17 doesn't appear that that's really  
18 ever going to occur.

19 Q. Any other basis?

20 A. No. None that I can bring  
21 to mind right now.

22 Q. And, again, obviously  
23 leaving aside any discussions with  
24 your attorneys.

1 MR. SAUDER: Okay.

2 RECESS

3 MR. BASSMAN: Back on the  
4 record.

5 BY MR. BASSMAN:

6 Q. Mr. Fink, I just have a  
7 couple last questions for you.

8 You testified earlier that  
9 Local 210 rejected Conectiv's  
10 attempts to impose a cash balance  
11 plan. Do you recall that testimony?

12 A. Yes, I do.

13 Q. Do you know when you first  
14 learned that Local 210 had rejected  
15 Conectiv's attempts to impose a cash  
16 balance plan?

17 A. It was back in the early  
18 part of the year 2000, 2001, whenever  
19 the contractual agreement with 210  
20 had expired and they started having  
21 talks about -- I think they were just  
22 open-ended discussions with them and  
23 they were, from what I understood,  
24 adamant that they would not accept

Page 198

Page 200

1 that.  
2 Q. And these would be the  
3 first collective bargaining agreement  
4 discussions after the ACE DelMarVa  
5 merger?

6 A. I would think so. Those  
7 agreements have been contractually  
8 extended on one-year increments.

9 Q. And you testified that you  
10 found out about Local 210's position  
11 on the cash balance plan from talking  
12 to union officials whom you're  
13 acquainted with, right?

14 A. Yes, I did.

15 Q. Did any of those officials  
16 ever mention whether the union  
17 consulted any attorneys about the  
18 cash balance plan proposal from  
19 Conectiv?

20 A. I do believe they had an  
21 attorney look at it. I don't know  
22 his name. I'm not sure it wasn't  
23 some attorney that was from the  
24 International or retained by the

1 MR. SAUDER: Yes.  
2 MR. BASSMAN: We're done.  
3 (Testimony concluded at  
4 2:28 p.m.)  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

Page 199

Page 201

1 International.

2 Q. Did you ever ask your  
3 acquaintances in the union if you  
4 could speak with their lawyer --

5 A. No.

6 Q. -- about your concerns with  
7 the cash balance plan?

8 A. No.

9 Q. Why not?

10 A. I just don't think that's  
11 appropriate.

12 Q. Did you ever ask any union  
13 officials if they could refer you to  
14 a lawyer to talk to you about the  
15 cash balance plan?

16 A. No.

17 MR. BASSMAN: Well, at this  
18 point, I'm done.

19 Joe, do you have any  
20 questions?

21 MR. SAUDER: I have no  
22 questions.

23 MR. BASSMAN: You guys are  
24 reading and signing?

# WITNESS CERTIFICATION

1  
2  
3 I hereby certify that I  
4 have read the foregoing transcript of  
5 my deposition testimony, and that my  
6 answers to the questions propounded,  
7 with the attached corrections or  
8 changes, if any, are true and  
9 correct.  
10  
11  
12

13 \_\_\_\_\_  
14 DATE JOSEPH I. FINK  
15  
16  
17

18 \_\_\_\_\_  
19 PRINTED NAME  
20  
21  
22  
23  
24

**In The Matter Of:**

*J. Michael Charles, et al*  
v.  
*Pepco Holdings, Inc., et al*

---

*ETHAN E. KRA*  
*May 25, 2007*  
*Volume 1*

---

***REPORTING ASSOCIATES, LLC***

*Certified & Registered Professional Reporters*

*Cherry Hill -- Philadelphia -- Trenton*

*(888) 795-2323*



*[www.ReportingAssociates.com](http://www.ReportingAssociates.com)*

ETHAN E. KRA

Page 1

1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
3           CIVIL ACTION NO. C.A. NO. 05-702 (SLR)

4           -----  
5           J. MICHAEL CHARLES; MAURICE W.  
6           WARD, JR.; and JOSEPH I. FINK, JR.,  
7           on behalf of themselves and all  
8           others similarly situated,

9                     Plaintiffs,

10                    v.

11           PEPCO HOLDINGS, INC.; CONECTIV, and  
12           PEPCO HOLDINGS RETIREMENT PLAN,

13                     Defendants.  
14           -----

15                     New York, New York  
16                     Friday, May 25, 2007

17                     TRANSCRIPT of testimony of ETHAN E. KRA,  
18           as taken by and before Sean M. Fallon, a Registered  
19           Professional Reporter and Notary Public of the  
20           Commonwealth of Pennsylvania, at the offices of  
21           LITTLER MENDELSON, 885 Third Avenue, 16th Floor,  
22           commencing at 9:09 o'clock in the forenoon.  
23  
24



ETHAN E. KRA

Page 2

1 A P P E A R A N C E S:  
2 CHIMICLES & TIKELLIS LLP  
3 BY: JAMES R. MALONE, JR., ESQ.  
4 JOSEPH G. SAUDER, ESQ.  
5 One Haverford Centre  
6 361 West Lancaster Avenue  
7 Haverford, PA 19041  
8 (610) 642-8500  
9 jamesmalone@chimicles.com  
10 josephsauder@chimicles.com  
11 Attorneys for Plaintiffs  
12  
13 PEPPER HAMILTON LLP  
14 BY: BARAK A. BASSMAN, ESQ.  
15 3000 Two Logan Square  
16 Eighteenth and Arch Streets  
17 Philadelphia, PA 19103-2799  
18 (215) 981-4000  
19 bassmanb@pepperlaw.com  
20 Attorneys for Defendants  
21 LITTLER MENDELSON  
22 BY: SUSAN KATZ HOFFMAN, ESQ.  
23 Three Parkway  
24 1601 Cherry Street, Suite 1400  
Philadelphia, PA 19102-1321  
(267) 402-3000  
shoffman@littler.com  
Attorneys for Defendants  
BARBARA C. ALEXANDER,  
ASSISTANT GENERAL COUNSEL  
Pepco Holdings, Inc.  
P.O. Box 231  
Wilmington, DE 19849-0231  
(302) 429-3206  
Attorney for Defendants

Page 4

1 (It is hereby stipulated and agreed  
2 by and among counsel that sealing, certification  
3 and filing are waived;  
4 It is further stipulated and agreed  
5 by and among counsel that all objections, except as  
6 to the form of the question, are reserved until the  
7 time of trial.)  
8 ETHAN E. KRA, after having taken an  
9 affirmation to testify truthfully, was examined and  
10 testified as follows:  
11 EXAMINATION  
12 BY MR. MALONE:  
13 Q. Good morning, Mr. Kra. My name is  
14 Jim Malone. I represent the Plaintiffs in a  
15 lawsuit against Pepco Holdings and Conectiv that  
16 relates to their pension plan.  
17 I'm going to be asking you some  
18 questions today about that lawsuit. Mr. Fallon is  
19 going to try to take down my questions and your  
20 answers. His fingers are very quick, but they are  
21 not quick enough to catch us both talking at the  
22 same time, so it's important that you let me finish  
23 my questions and I will try and restrain myself and  
24 not ask you another question until you finish the

Page 3

1 I N D E X		
2 WITNESS		3 PAGE
4 ETHAN E. KRA		
5 By Mr. Malone		4,147
6 By Mr. Bassman		144
7 E X H I B I T S		
8 NUMBER	9 DESCRIPTION	10 PAGE
11 P-30	List of Expert Witness Cases	28
12 P-31	Plaintiffs' Answering Brief In	59
13	Opposition to Defendants' Motion	
14	to Dismiss	
15 P-32	E-Mail, Mar. 14, 2007, Hoffman to Kra,	61
16	with Attachment	
17 P-33	Conectiv Cash Balance Pension Plan	68
18	Statement	
19 P-34	Documents KRA 00414-447	69
20 P-35	Expert Report	70
21 P-36	E-Mail, Bonin to Kra, Apr. 16, 2007	73
22 P-37	Part One, Conectiv Cash Balance	89
23	Sub-Plan	
24 P-38	Pepco Holdings, Inc. Cash Balance	92
	Account Statement	
P-39	Reprint of an Article from Business	112
	Insurance, May 13, 2002	
P-40	Handwritten Notes, KRA 00001	114
P-41	Letter, Yu to Kra, April 17, 2007	125
P-42	E-Mail String, KRA 00391 and 392	132

Page 5

1 answer that you give. I'm usually the one that  
2 breaks that rule.  
3 If you need to take a break for any  
4 reason, let me know. The only thing I would ask is  
5 that you answer a pending question before we take a  
6 break.  
7 If you don't hear a question, don't  
8 understand a question, he'll be happy to read it  
9 back for you. If you doesn't understand it, let me  
10 know, maybe I can give you a better question; maybe  
11 not. We'll see.  
12 Are you employed, sir?  
13 A. Yes.  
14 Q. Where are you employed?  
15 A. Mercer Human Resource Consulting,  
16 Inc.  
17 Q. And you are based here in New York?  
18 A. Yes, when I'm not on an airplane.  
19 Q. I know the feeling very well.  
20 Now, Mercer is affiliated with Marsh  
21 & McLennan, is that correct?  
22 A. We are a wholly-owned subsidiary,  
23 through -- I don't remember what legal chains -- of  
24 MMC.

2 (Pages 2 to 5)

ETHAN E. KRA

<p style="text-align: right;">Page 6</p> <p>1 Q. And then MMC is the ultimate parent 2 of -- 3 A. Yes. 4 Q. -- Marsh &amp; McLennan? 5 A. Marsh, Inc. -- it's -- MMC is the 6 parent, Marsh, Inc., we're selling Putnam, 7 Mercer -- 8 Q. You did a great diagram with your 9 hands. Now let me see if I can break it down in 10 words so we can get it on the record. 11 MMC is the ultimate parent -- 12 A. Yes. 13 Q. -- and then it has a series of 14 subsidiaries, which include your employer, Oliver 15 Wyman and Marsh &amp; McLennan? 16 A. Marsh, Inc. 17 Q. Marsh, Inc. I'm sorry. 18 A. And it currently owns Putnam, but 19 that is pending sale. 20 Q. Okay. 21 A. It may have other subsidiaries of 22 minor nature, and Kroll -- I don't know all the 23 legal entities owned by my parent company. 24 Q. Your work, do you only work within</p>	<p style="text-align: right;">Page 8</p> <p>1 A. No. 2 Q. Does your firm have any policy with 3 respect to that, to your knowledge? 4 A. It would be handled by the -- there 5 is a policy, and that is the responsibility of the 6 client manager -- client relationship manager. 7 Q. And who is the client relationship 8 manager on this matter? 9 A. My understanding is it's Mr. Welch, 10 in our Washington office. 11 Q. And what is Mr. Welch's title? 12 A. He is a worldwide partner. 13 Q. And what is your title? 14 A. Worldwide partner, chief actuary, 15 U.S. Retirement. 16 Q. You've been employed at Mercer Human 17 Resource since 1977, is that correct? 18 A. Correct. 19 Q. And you are an actuary? 20 A. Yes. 21 Q. And you are also an enrolled 22 actuary? 23 A. Yes. 24 Q. And could you explain to a layman</p>
<p style="text-align: right;">Page 7</p> <p>1 the Mercer Human Resource Consulting, or do you 2 work for some of the other subsidiaries on 3 occasion? 4 A. I am employed by Mercer Human 5 Resource Consulting. 6 I will, on occasion, collaborate 7 with colleagues in our MMC companies on a 8 particular client issue, if the issue transcends 9 just human resources. 10 Q. Have you collaborated with anyone 11 outside of Mercer Human Resources in connection 12 with your work on this case? 13 A. The only individual outside of 14 Mercer Human Resource Consulting is, MMC has 15 attorneys that must approve all engagement letters, 16 so the engagement letter on this assignment had to 17 be approved by MMC counsel. 18 Q. To your knowledge, do any of the 19 affiliated MMC companies have an ongoing business 20 relationship with Pepco Holdings? 21 A. I do not know. 22 Q. Is that something that you made 23 inquiry about as part of your considering whether 24 to take this engagement?</p>	<p style="text-align: right;">Page 9</p> <p>1 what the significance is of your status as an 2 enrolled actuary? 3 A. Enrolled actuaries are individuals 4 who have passed examinations pertinent to pension 5 work under ERISA, examinations that are 6 administered either directly or under the aegis of 7 or in conjunction with the Joint Board of the 8 Enrollment of Actuaries, which is a group of five 9 individuals who are federal employees who set the 10 standards for actuaries who are -- if I could use 11 the word license -- I don't want to use -- it's not 12 a legal license, but -- licensed to prepare filings 13 on pension matters, certain particular filings that 14 are filed with the Internal Revenue Service and the 15 Pension Benefit Guaranty Corporation. 16 Q. That would include the Schedule B 17 that would appear on a 5500 filing? 18 A. Correct. 19 Q. And how long have you been an 20 enrolled actuary? 21 A. I became an enrolled actuary, I 22 believe it was, in 1979. 23 Q. And you kept current with your 24 registration?</p>

3 (Pages 6 to 9)

ETHAN E. KRA

Page 10	Page 12
<p>1 A. Yes, I have.</p> <p>2 Q. Do you regularly prepare 5500</p> <p>3 filings in your current position?</p> <p>4 A. I do not prepare the filings,</p> <p>5 themselves. I do review and sign Schedule Bs.</p> <p>6 Q. Tell me about how you got involved</p> <p>7 in this case.</p> <p>8 A. I received an E-Mail from one of my</p> <p>9 colleagues saying that they were in need of an</p> <p>10 expert witness on a particular client and asked if</p> <p>11 I'd be available.</p> <p>12 Q. Who E-Mailed you, do you recall?</p> <p>13 A. I believe it was Gary Jerome.</p> <p>14 Q. What is Mr. Jerome's position?</p> <p>15 A. Gary Jerome is a worldwide partner,</p> <p>16 Mercer Human Resource Consulting.</p> <p>17 Q. And is he an actuary, as well?</p> <p>18 A. No.</p> <p>19 Q. What does he do, functionally?</p> <p>20 A. He is in the management of the</p> <p>21 retirement business. I believe he is more</p> <p>22 currently involved in defined contribution plans</p> <p>23 and defined benefit plans.</p> <p>24 Q. And how about yourself? Do you have</p>	<p>1 actuarial trainee.</p> <p>2 Q. Still, 1975 is going back a ways.</p> <p>3 Other than that assignment for ACE,</p> <p>4 you've never done -- personally done any work for</p> <p>5 Pepco Holdings?</p> <p>6 A. I do not recall any other work on</p> <p>7 this company.</p> <p>8 Q. Did you have assistants for your</p> <p>9 work in this case?</p> <p>10 A. Yes.</p> <p>11 Q. How many people would you say were</p> <p>12 directly involved in your work?</p> <p>13 A. Three.</p> <p>14 Q. And who were they?</p> <p>15 A. Bruce Cadenhead.</p> <p>16 Q. Can you spell that?</p> <p>17 A. C-a-d-e-n-h-e-a-d.</p> <p>18 Q. And -- well, let's get the three</p> <p>19 down first and then we can --</p> <p>20 A. Michele Miller and Stephane --</p> <p>21 Q. S-t-e-p-h-a-n?</p> <p>22 A. I don't know.</p> <p>23 Q. Okay.</p> <p>24 A. And I believe the last name, and I</p>
Page 11	Page 13
<p>1 a greater involvement with defined benefit as</p> <p>2 contrasted with defined contribution?</p> <p>3 A. More defined benefit than defined</p> <p>4 contribution.</p> <p>5 Q. And when, approximately, were you</p> <p>6 contacted by Mr. Jerome?</p> <p>7 A. Sometime earlier this year.</p> <p>8 Q. Does your firm now, Mercer Human</p> <p>9 Resource, have an ongoing relationship with Pepco</p> <p>10 Holdings?</p> <p>11 A. I -- there is a client manager. I</p> <p>12 am not aware of the extent of any business</p> <p>13 relationship.</p> <p>14 Q. Have you previously done work for</p> <p>15 Pepco Holdings?</p> <p>16 A. I believe that I was involved with</p> <p>17 one of its predecessor companies at a previous job.</p> <p>18 In 1975, when I was an employee at</p> <p>19 the Prudential Insurance Company of America, I was</p> <p>20 given the task of analyzing the sources of</p> <p>21 actuarial gains and losses on the Atlantic City</p> <p>22 Electric pension planning.</p> <p>23 Q. You've got a very good memory.</p> <p>24 A. It was a major assignment for a new</p>	<p>1 may be butchering it, is Bohne, B-o-h-n-e, but I</p> <p>2 could not be sure of the spelling or the</p> <p>3 pronunciation because he reported to Bruce on the</p> <p>4 assignment.</p> <p>5 Q. Okay.</p> <p>6 Now, let's go back to Bruce</p> <p>7 Cadenhead. What's his position with -- can I call</p> <p>8 it MRC?</p> <p>9 A. Just call it Mercer.</p> <p>10 Q. Mercer? Okay.</p> <p>11 What's his position with Mercer?</p> <p>12 A. He is a principal.</p> <p>13 Q. Now, is that different from a</p> <p>14 worldwide partner?</p> <p>15 A. One notch below.</p> <p>16 Q. Is he an actuary?</p> <p>17 A. Yes.</p> <p>18 Q. Is he an enrolled actuary?</p> <p>19 A. Yes.</p> <p>20 Q. He's subordinate to you in the chain</p> <p>21 of command?</p> <p>22 A. He is marginally less --</p> <p>23 subordinate, yes.</p> <p>24 Q. And what -- how would you describe</p>

4 (Pages 10 to 13)

ETHAN E. KRA

<p style="text-align: right;">Page 14</p> <p>1 Bruce's role in this engagement to someone who was 2 completely unfamiliar with the work that your firm 3 did? 4 A. I got the materials, I went through 5 them. I met with Bruce, gave him a copy of the 6 materials, outlined what I would like programmed in 7 broad terms, and he, working with Stephane, had 8 Stephane program it, and he checked it and then 9 presented it to me. I went over it, I went through 10 all the methods and assumptions. Said, "Nope, 11 that's not what I wanted. This is what I wanted." 12 So, I would not go through and check 13 the detailed numbers, until I knew all the methods 14 and assumptions were as I wanted them to be. 15 Q. Did that take a couple times? 16 A. Once or twice, back and forth, 17 and -- 18 Q. Okay. 19 A. And then checked it over, and then 20 Michele -- Michele Miller is my administrative 21 assistant, she takes care of things like typing, 22 filing, E-Mailing, copying, and Stephane is a 23 junior analyst. 24 Q. Now, is Stephane an actuary?</p>	<p style="text-align: right;">Page 16</p> <p>1 A. Well, we gave it in our -- attached 2 to our report, the data that we used. It would 3 include -- we would normally ask either for date of 4 birth or attained age. 5 Q. Right. 6 A. Generally we prefer, for our 7 programming, date of birth, but we'll take age, and 8 we don't view that as a deficiency because, if you 9 have age in years and months, you can back into 10 date of birth within about 15 days, and that's 11 close enough for the rounding in actuarial 12 formulas. 13 Q. Okay. 14 A. Same thing with date of employment 15 or years of service. We might prefer one, but 16 we'll take either one, because we can convert from 17 one to the other. 18 Q. Right. 19 A. We ask for pay, as defined in the 20 plan document under the old formula. 21 Q. Okay. Which was different for some 22 of them, than it is under the new formula, right? 23 A. Correct. 24 So, we asked for pay under the old</p>
<p style="text-align: right;">Page 15</p> <p>1 A. I do not believe so. I believe he 2 may be taking some exams, but I do not believe that 3 he has credentials yet. 4 Q. How long has Stephane been working 5 with your firm? 6 A. I'm not sure. He's in a pool of 7 junior analysts that -- I'm a parasite -- I just 8 draw upon as I need. Bruce selected him to work on 9 it with him, based on knowledge level, 10 availability. He's been with us somewhere between 11 zero and probably three years. 12 Q. How about Bruce? How long has Bruce 13 been with Mercer? 14 A. Bruce joined Mercer mid to late 15 '80s. 16 Q. Did you feel like you had adequate 17 resources to get the job done? 18 A. Most certainly. 19 Q. How about data? Were you happy with 20 the data? 21 A. The data we got was enough to do the 22 work. 23 Q. What data did you get, just in broad 24 brush strokes?</p>	<p style="text-align: right;">Page 17</p> <p>1 formula for specific years, we asked for pay under 2 the new formula for the period when the new formula 3 was in effect. 4 We asked for statements from the 5 recordkeeper on the cash balance plan so that we 6 could look at how they calculated the benefits. It 7 provides number of -- I won't call them audit 8 checks, but reasonability checks, in that we can 9 then verify that, A, we understand the plan and how 10 it works because we can match what the vendor did; 11 B, we can confirm that the data is consistent with 12 what the vendor got. 13 We are not auditors, we are not 14 going to go in and check the W-2s and payroll in 15 the bowels of the company's basement to see that 16 they were correctly transmitted to us. 17 Q. But you'd like the numbers to foot? 18 A. But we would like the numbers to -- 19 exactly. We would like numbers to cross-foot 20 between what we get from the vendor, who does the 21 recordkeeping, and the raw data that we got from 22 the company, and we compare that to a plan document 23 to make sure that we understand how the plan works 24 in operation, and that we believe that the plan</p>

5 (Pages 14 to 17)

ETHAN E. KRA

<p style="text-align: right;">Page 18</p> <p>1 document we have is the plan document that is being 2 administered. 3 Q. Did you find any variation between 4 how the plan is operating and the plan document, as 5 part of your work? 6 A. Yes. 7 Q. What did you find? 8 A. We found that one of the 9 participants is being given too large a cash 10 balance benefit on transition credits. That one of 11 the participants, under the plan document, should 12 be getting smaller transition credits than the 13 vendor is currently crediting on all the 14 statements. 15 Q. I'm probably going to regret asking 16 that question, but the question is that I probably 17 should know which one it is. 18 A. I'd have to look at the file. 19 Q. Is it an ACE guy or a Delmarva guy? 20 A. I don't remember. I just remember 21 that one of them was getting transition credits as 22 if he had been there a year longer than he really 23 had. 24 Q. Anything else?</p>	<p style="text-align: right;">Page 20</p> <p>1 programs. 2 Q. Would that be like Top Hat plans, 3 things like that? 4 A. Top Hat plans, Rabbi trusts, secular 5 trusts and various other programs. 6 Q. We covered pension, retiree medical 7 financial side, and executive compensation. 8 Anything else that you do? 9 A. COLI and BOLI. 10 Q. I'm going to learn something new. 11 What are COLI and BOLI? 12 A. COLI is Corporate Owned Life 13 Insurance; BOLI, Bank Owned Life Insurance. 14 These are financial investments of 15 companies that are very often used to shadow-fund 16 employee benefit obligations, but, technically, 17 could be used to finance other business operational 18 issues. 19 Q. So, we've done pension, we've done 20 retiree medical, we've done executive compensation, 21 we've done COLI and BOLI. 22 Anything else? 23 A. I would be involved in non- 24 discrimination testing on defined contribution</p>
<p style="text-align: right;">Page 19</p> <p>1 A. That's the only inconsistency we 2 found. 3 Q. You've been working as an actuary 4 for about 30 years now? 5 A. Thirty years at Mercer. 6 Q. Mercer. 7 A. And, prior to that, just under four 8 years at Prudential. 9 Q. Now, Prudential, did you do pension 10 or did you do life? 11 A. I did a mixture. 12 Q. At Mercer, what do you do? Do you 13 do just pension or do you do other things? 14 A. I do pension, retiree medical, as 15 far as accounting and financing, but not design. I 16 don't get into designing the details of the 17 program. I was more the financial -- 18 Q. So you would be, on the retiree 19 medical front, involved with part of the process 20 where financial statements would reflect an 21 accumulated value for that potential liability? 22 A. I work on that, as well as issues 23 relating to pre-funding retiree medical. I work on 24 the financial aspects of executive benefit</p>	<p style="text-align: right;">Page 21</p> <p>1 plans, as well. 2 Q. How about on the defined benefit 3 side? Do you do discrimination work on that? 4 A. I would be involved in non- 5 discrimination testing there. Various types of 6 analyses for government filings. Involved with the 7 legislative and regulatory process in Washington. 8 Q. Anything else? 9 A. I'm an officer in some of the 10 actuarial organizations. 11 Q. Which ones? 12 A. I currently serve as vice-president 13 in the Society of Actuaries. 14 Q. Okay. 15 A. And I am vice-chair of the Pension 16 Section Council of the American Academy of 17 Actuaries, plus a list of committees that you can 18 see from my CV. 19 Q. In those roles, do you have -- is 20 part of your work commenting on or propounding on 21 drafting statements of actuarial standards? 22 A. We will comment on actuarial 23 standards -- proposed actuarial standards of 24 practice. We will develop practice notes for</p>

6 (Pages 18 to 21)



ETHAN E. KRA

<p style="text-align: right;">Page 22</p> <p>1 practitioners on actuarial standards of practice.</p> <p>2 Q. In laymen's terms, what are</p> <p>3 actuarial standards of practice?</p> <p>4 A. There is an Actuarial Standards</p> <p>5 Board, which represents major actuarial</p> <p>6 organizations in the United States, and it has a</p> <p>7 number of actuarial standards of practice, which</p> <p>8 are guidelines of appropriate actuarial practice</p> <p>9 for actuaries practicing in different areas.</p> <p>10 Example would be data. What is</p> <p>11 expected of an actuary to review data. An actuary</p> <p>12 is not expected to audit the data, but is expected</p> <p>13 to look at the data for internal consistency.</p> <p>14 Q. Making sure the numbers foot?</p> <p>15 A. Right.</p> <p>16 Q. Because, if the numbers don't foot,</p> <p>17 then maybe the data is not reliable and maybe you</p> <p>18 should ask more questions?</p> <p>19 A. If the numbers don't foot, then to</p> <p>20 what extent don't they foot? Usually a large</p> <p>21 company, large amount of data, there will be a</p> <p>22 number of discrepancies. Is it material or is it</p> <p>23 not?</p> <p>24 So, for example, if I get 10,000</p>	<p style="text-align: right;">Page 24</p> <p>1 understanding is of those standards that govern</p> <p>2 work for an actuary while he appears as an expert</p> <p>3 witness?</p> <p>4 A. It's an extensive standard, but</p> <p>5 among them is: To only testify on issues that one</p> <p>6 is qualified to testify on. It's been a while</p> <p>7 since I actually read it, so I'm not going to be</p> <p>8 able to tell you the details of what's in it, but</p> <p>9 it's just almost become part of the psyche of the</p> <p>10 actuary that a good actuary internalizes those</p> <p>11 standards and, in fact, at Mercer we even have</p> <p>12 higher standards, in some respects, so that we</p> <p>13 would only testify on those items that we feel</p> <p>14 qualified to testify.</p> <p>15 Q. Okay.</p> <p>16 A. Only testify on items that we</p> <p>17 believe to be true.</p> <p>18 Q. That's a good one.</p> <p>19 A. Yes.</p> <p>20 Know that we are not for sale. We</p> <p>21 just -- we look at it -- my position is, we look at</p> <p>22 an issue, we figure out what we believe the answer</p> <p>23 to be, we say it. If somebody doesn't like it,</p> <p>24 they don't have to take us.</p>
<p style="text-align: right;">Page 23</p> <p>1 data records, and I find that three people's date</p> <p>2 of birth changed in the day of the month, I'm not</p> <p>3 even going to bother to follow up on it because</p> <p>4 it's irrelevant to the process.</p> <p>5 Q. Right.</p> <p>6 A. On the other hand, if I have 10,000</p> <p>7 records, a thousand of them have changes in year of</p> <p>8 birth or sex --</p> <p>9 Q. That's a problem.</p> <p>10 A. -- I'm going to have to ask some</p> <p>11 questions.</p> <p>12 Q. And year of birth and sex are</p> <p>13 important, because that would affect the life</p> <p>14 expectancy that would drive a lot of your work, is</p> <p>15 that correct?</p> <p>16 A. Life expectancy, among other</p> <p>17 factors.</p> <p>18 Q. Now, are there statements of</p> <p>19 actuarial standards of practice that govern your</p> <p>20 work when you testify as an expert?</p> <p>21 A. Yes.</p> <p>22 Q. Is that 17?</p> <p>23 A. I'd have to look up the number.</p> <p>24 Q. Can you summarize what your</p>	<p style="text-align: right;">Page 25</p> <p>1 Q. Fair enough.</p> <p>2 Do you know whether the governing</p> <p>3 actuarial standards for expert testimony</p> <p>4 specifically provide that you are supposed to</p> <p>5 review them in connection with each engagement?</p> <p>6 A. I do not recall that.</p> <p>7 Q. Now, how about the people that work</p> <p>8 with the testifying actuary? Are they bound by the</p> <p>9 same standards of conduct in connection with the</p> <p>10 engagement?</p> <p>11 A. Well, take Stephane Bonin. He's not</p> <p>12 even an actuary.</p> <p>13 Q. Okay.</p> <p>14 A. The actuarial standards of practice</p> <p>15 can't bind him.</p> <p>16 Q. Right.</p> <p>17 A. Bruce Cadenhead is an actuary.</p> <p>18 Q. They bind Bruce.</p> <p>19 A. They bind Bruce.</p> <p>20 Q. And they require Bruce to supervise</p> <p>21 Stephane in connection with his work?</p> <p>22 A. They require Bruce to do</p> <p>23 professional work in all respects. We don't wait</p> <p>24 for the standard to say, Thou shalt do the right</p>

7 (Pages 22 to 25)



ETHAN E. KRA

<p style="text-align: right;">Page 26</p> <p>1 thing. We, as a firm, say, Thou shalt do the right  2 thing, and just make sure that the standard isn't  3 raising the bar higher than we would have.  4 But, as a firm, we have very high  5 standards. So what we do is, when new standards  6 come out, we compare the standards to our own  7 internal corporate policies --  8 Q. To see if you need to make changes?  9 A. Make changes.  10 And, if we are ready at a higher  11 level, we say, that's very nice. Now everybody  12 else will be coming closer to us.  13 Q. Do you have a review system for work  14 in the office? Let me give you a context for this,  15 because I have a lot more experience dealing with  16 CPAs at public companies than I have dealing with  17 actuaries.  18 For example, for SEC filings, it is  19 common that most major CPA firms, before the  20 opinion goes out the door, a partner that has not  21 been directly involved in the engagement reviews  22 the work, reviews the audit plan, and then signs  23 off on it. The function is called a review partner  24 and whatever.</p>	<p style="text-align: right;">Page 28</p> <p>1 (Exhibit P-30 is marked for  2 identification.)  3 BY MR. MALONE:  4 Q. The court reporter has handed you a  5 document that we've marked P-30 for identification  6 purposes.  7 Can you tell me what this is?  8 A. This is a list of cases in which I  9 have been involved as an expert witness.  10 Q. And did you prepare this?  11 A. Yes.  12 Q. What records did you rely upon to  13 prepare Plaintiffs' 30?  14 A. I keep a running list. Just took  15 the last one from the last time I had it prepared,  16 check if there are any new cases, add them, if need  17 be, and send it on to the next attorney.  18 Q. Let's start with Alexander versus  19 Primerica Holdings. Now, that was a welfare case,  20 is that correct?  21 A. That was a case involving retiree  22 medical benefits and retiree life benefits.  23 Q. And on whose behalf did you testify  24 in that case, do you recall?</p>
<p style="text-align: right;">Page 27</p> <p>1 The long-winded question is, do you  2 have somebody that performs that function  3 generally?  4 A. At Mercer, any piece of work must  5 be -- is done by one person and reviewed by  6 another. In this case, it would be viewed that  7 Bruce did the work and I reviewed it --  8 Q. Okay.  9 A. -- even though -- it's the type of  10 situation where you can have the signing person be  11 the reviewer, if the other person who is competent  12 to do the job --  13 Q. Could have signed it on his own?  14 A. Could have signed it on his own.  15 Since Bruce was clearly competent to  16 sign on his own, as an experienced, very senior  17 actuary, well-recognized in the profession, we met  18 the standards, within Mercer, to have it peer  19 reviewed.  20 Q. Have you testified before?  21 A. Yes.  22 MR. MALONE: I think we have a list.  23 Let's go off the record.  24 (Discussion is held off the record.)</p>	<p style="text-align: right;">Page 29</p> <p>1 A. Primerica.  2 Q. And what was the broad subject  3 matter of your opinions in that case?  4 A. The issue was whether or not a  5 benefit change to the retiree medical -- to the  6 retiree medical program circa 1984 was a benefit  7 improvement or a benefit reduction.  8 Q. And that was relevant to the vesting  9 arguments in the case?  10 A. That was relevant to the issue of  11 whether or not the retired executives, when they,  12 in fact, were the executives -- when they made a  13 change, whether they cut benefits or improved  14 benefits. Their claim was that they never intended  15 the reservation of rights to allow them to cut  16 benefits.  17 Q. And Frank versus Landry -- Frank  18 Landry versus the Airline Pilots Association, what  19 can you tell me about that case?  20 A. That was a case involving the  21 pension plan of Taca Airlines, a foreign flag  22 carrier that left the United States, abandoned a  23 pension plan, that had possibly not had all the  24 paperwork done correctly, and now the issue was how</p>

8 (Pages 26 to 29)

ETHAN E. KRA

<p style="text-align: right;">Page 30</p> <p>1 to distribute the monies in the trust among the 2 various pilots. 3 Q. And who did you appear before on 4 that matter? 5 A. A.L.P.A. retained me -- the Airline 6 Pilots Association -- to prepare a reasonable and 7 justifiable and defensible method of allocating the 8 assets among the pilots, present it to the court, 9 so that the monies could be distributed in a 10 reasonable fashion. 11 Q. The Fresca case? 12 A. That was an age discrimination case, 13 representing FDIC, and I'll be honest with you, I 14 don't remember all the details on that. That was 15 13 years ago. 16 Q. Yes, that was a long time ago. What 17 I saw of it was it involved medical and life 18 insurance benefits -- 19 A. Yes. 20 Q. -- that had been rejected by the 21 FDIC as part of a -- I forget the technical word. 22 It's when banks go bankrupt. 23 A. Yes. 24 Q. Banks technically can't go bankrupt.</p>	<p style="text-align: right;">Page 32</p> <p>1 issues as to various pension plan amendments? 2 Q. And you were working with MacAndrews 3 &amp; Forbes on that? 4 A. Yes. 5 Q. And in the City of Philadelphia case 6 you worked for the city, is that right? 7 A. I represented the city, I prepared 8 an expert report. I believe that reference to the 9 expert report was in the public record. I do not 10 know whether the expert report, itself, got into 11 the public record. 12 Q. Depends on how you define "public 13 record," too. It may not be easy to retrieve. 14 A. I don't know, yes, but the reason I 15 know that reference to it was -- it was in the 16 public record, subsequently I was called by a 17 reporter. 18 Q. There you go. 19 How about Vornado versus Trustees? 20 A. I represented the trustees of a 21 multi-employer pension plan. Litigation was a 22 pension issue. 23 Q. This was withdrawal liability? 24 A. This was actually relating to</p>
<p style="text-align: right;">Page 31</p> <p>1 Neither can life insurance companies. They have 2 their own insolvency proceedings. 3 A. Right. 4 Q. How about the Compagnie Nationale 5 Air France cases? 6 A. Those were two cases that were 7 combined in the Southern District of Florida. 8 Since Air France is an entity of the French 9 government, the trial cannot be by jury; it must be 10 a bench trial. It was an age discrimination case 11 that looked at all of the benefits, compensation 12 they would have gotten, they could have gotten, 13 they actually got, to determine whether or not they 14 had suffered any damages. 15 Q. Who did you appear on behalf of? 16 A. Air France. 17 Q. And Tepperman versus MacAndrews &amp; 18 Forbes Group? 19 A. I prepared an expert report. There 20 were no depositions. I never got to trial. 21 Q. What kind of case was that? 22 A. That was a -- Mr. Tepperman was, I 23 believe, suing for wrongful discharge, and it was 24 looking at the pension benefits, and there were</p>	<p style="text-align: right;">Page 33</p> <p>1 whether or not the withdrawing employer could 2 demand a split -- a bifurcation of the pension 3 plan, and the issues relating to rules, and then 4 ultimately went on to withdrawal liability. 5 Q. How about the Garelick versus Rodier 6 Corporation? 7 A. Worked with Rodier, do not recall 8 the details, other than -- I just don't recall. 9 Q. That's fine. 10 The CIGNA case, what did that 11 involve, do you remember? 12 A. That was non-qualified benefits 13 funded with COLI -- 14 Q. Okay. 15 A. -- I believe, and I think that was 16 the CIGNA case. 17 Q. And how about the Leonard F. versus 18 Israel Discount? 19 A. That was a disability litigation on 20 long-term disability. ADA. 21 Q. Yes, ADA. What was your roll in 22 that case, do you recall? 23 A. Representing Israel Discount Bank on 24 long-term disability policy issues and pricing.</p>

9 (Pages 30 to 33)

ETHAN E. KRA

<p style="text-align: right;">Page 34</p> <p>1 Q. I take it from this that the last 2 time that you testified in a case was 1998. Is 3 that correct? 4 A. Let's see, I've been -- 5 Q. No, I might have been wrong. 6 MR. BASSMAN: And, when you say 7 "testified," do you mean at deposition or at trial? 8 MR. MALONE: Either or. I'm 9 looking -- it's probably '99. 10 THE WITNESS: I was in Miami in '99. 11 Yes. 12 BY MR. MALONE: 13 Q. Any particular reason why you 14 haven't had a testifying engagement -- 15 A. Generally, our firm does not look -- 16 seek out expert witness work. Try to -- as I've 17 moved up the line, we find it better to work on 18 other things. 19 Q. That's okay. You don't have to like 20 lawyers. We won't be offended. We are used to it. 21 Actuaries have a much better public image than 22 lawyers do. 23 So, you've been an actuary involved 24 with pension issues under ERISA at least since 1979</p>	<p style="text-align: right;">Page 36</p> <p>1 correct? 2 A. If an employee leaves before 3 satisfying the vesting requirements under the plan, 4 and does not get re-employed, then they would 5 forfeit the benefit. 6 Q. And the re-employment might also 7 turn on when they got re-employed, because -- if 8 the break in service was too long? 9 A. Correct. 10 Q. Now, ERISA defines -- or divides 11 pension plans into two broad categories, is that 12 correct? 13 A. First of all, you have profit 14 sharing plans and pension plans. 15 Q. Right. 16 A. Within pension plans, you have 17 defined contribution pension plans and defined 18 benefit pension plans. 19 Q. In defined contribution pension 20 plans, can you give me an example that a layman 21 would understand as a typical or stereotypical 22 defined contribution plan? 23 A. There are relative -- in the 24 universe of pension plans, defined contribution</p>
<p style="text-align: right;">Page 35</p> <p>1 when you became enrolled, is that correct? 2 A. Yes. 3 Q. Have you come to form an 4 understanding of what the term "accrued benefit" 5 means, under ERISA? 6 A. Yes. 7 Q. And what's your understanding? 8 A. It's a benefit based on salary and 9 service, compensation, all factors, through the 10 current date, but anticipating the possibility of 11 additional service that would vest that already 12 accrued benefit, if I can be circular in my 13 definition, for various entitlements. 14 Q. Let's talk about vesting, so we get 15 that on the table and get that out of the way, 16 because that does kind of confuse things. 17 ERISA sets vesting standards for 18 pension plans? 19 A. Yes. 20 Q. And, for an employee, for example, 21 that starts today, he or she may earn an accrued 22 benefit under an ERISA-regulated qualified pension 23 plan, but, if they leave before they satisfy the 24 vesting schedule, they don't get that, is that</p>	<p style="text-align: right;">Page 37</p> <p>1 pension plans are less common. They would be plans 2 where the company promises to deposit a formulaic 3 amount of money into an account on behalf of an 4 individual based on service, compensation, other 5 factors, and is committed to, independent of the 6 profitability of the company, with no board 7 discretion, and would require a plan amendment to 8 change that. 9 So, in a defined contribution 10 pension plan, the participant can look to the four 11 corners of the plan document and know how much the 12 employer must deposit on his or her behalf. 13 The actual value that that will then 14 accumulate to will depend on the investment return 15 in whichever account it's deposited. The plan may 16 offer the employee choice or it may have no choice. 17 There may be one pool of money, there may be 18 multiple pools of money, and that's all a part of 19 the plan design. 20 MR. MALONE: Can you read back his 21 answer, which was very thorough, but very long, and 22 I want to make sure I understand it before I try to 23 break it down. 24 (Pertinent portion of the record is</p>

10 (Pages 34 to 37)

ETHAN E. KRA

<p style="text-align: right;">Page 38</p> <p>1 read.)</p> <p>2 BY MR. MALONE:</p> <p>3 Q. Because defined contributions are</p> <p>4 pension plans regulated under the Internal Revenue</p> <p>5 Code, the employer can't have discretion because</p> <p>6 the IRS requires that there be some definitely</p> <p>7 determinable benefit, is that correct?</p> <p>8 A. A pension plan must have a</p> <p>9 definitely determinable benefit formula. In a</p> <p>10 defined contribution plan, that is determined by</p> <p>11 how much money is deposited.</p> <p>12 Q. And in a defined benefit plan?</p> <p>13 A. Defined benefit plan defines, by</p> <p>14 formula, what the participant will receive.</p> <p>15 Q. In a defined contribution plan,</p> <p>16 what's your understanding of what constitutes the</p> <p>17 accrued benefit of a participant?</p> <p>18 A. In a defined contribution plan, the</p> <p>19 accrued benefit would equal the account balance.</p> <p>20 Q. And that's defined by statute, as</p> <p>21 you understand it?</p> <p>22 A. I'd have to check whether it's</p> <p>23 statute or regulation.</p> <p>24 Q. One or the other?</p>	<p style="text-align: right;">Page 40</p> <p>1 a profit sharing plan. I believe, but I'm not</p> <p>2 sure, that they could also be put into a defined</p> <p>3 contribution pension plan, although that -- I don't</p> <p>4 know if I've ever seen one, so I never researched</p> <p>5 whether it would be permitted.</p> <p>6 Q. Now, in a defined benefit plan, what</p> <p>7 determines the employees' accrued benefit?</p> <p>8 A. In a defined benefit plan, you look</p> <p>9 to the four corners of the plan document, and that</p> <p>10 would determine, based on all of the relevant</p> <p>11 factors, which could include the employee's date of</p> <p>12 birth, date of hire, compensation, job category,</p> <p>13 all of the factors relating to the individual, and</p> <p>14 perhaps exterior factors, such as Treasury interest</p> <p>15 rates, or other factors as defined in the document,</p> <p>16 which would then develop a benefit amount, which</p> <p>17 could be expressed either as an annuity or</p> <p>18 expressed as a lump sum.</p> <p>19 Q. Historically, did ERISA require that</p> <p>20 it be expressed as an annuity?</p> <p>21 A. I'm not going to comment on ERISA.</p> <p>22 I believe the IRS has historically required that</p> <p>23 the plan document at least describe how -- if it's</p> <p>24 not expressed as an annuity, how to convert it to</p>
<p style="text-align: right;">Page 39</p> <p>1 A. I believe so.</p> <p>2 Q. An example of a defined contribution</p> <p>3 pension plan that might be common might be a 401(k)</p> <p>4 plan with an employer match?</p> <p>5 A. No.</p> <p>6 Q. No?</p> <p>7 A. A 401(k) plan is a profit sharing</p> <p>8 plan.</p> <p>9 Q. Interesting.</p> <p>10 A. A 401 feature may not be legally</p> <p>11 added to a defined contribution pension plan.</p> <p>12 Q. Interesting.</p> <p>13 Savings plan with an employer match?</p> <p>14 A. Savings plan is a colloquial term of</p> <p>15 art, not in the Internal Revenue Code.</p> <p>16 Q. Oh, I know that.</p> <p>17 A. A savings plan would imply employee</p> <p>18 discretionary contributions, which could be either</p> <p>19 pretax or after tax. If they were pretax, that</p> <p>20 would constitute a 401(k) feature and could only be</p> <p>21 part of a profit sharing plan.</p> <p>22 Q. Okay.</p> <p>23 A. If they were after tax, they would</p> <p>24 be voluntary contributions, they could be put into</p>	<p style="text-align: right;">Page 41</p> <p>1 an annuity.</p> <p>2 Q. And the IRS requires the plan</p> <p>3 document to spell out the actuarial assumptions</p> <p>4 that would be used to perform that calculation?</p> <p>5 A. The plan document must specify the</p> <p>6 assumptions that would be used to convert the lump</p> <p>7 sum amount into an annuity --</p> <p>8 Q. And --</p> <p>9 A. -- but many plan documents do not</p> <p>10 define the benefit in terms of annuities, but</p> <p>11 define them in terms of lump sums. However, they</p> <p>12 do provide conversion factors.</p> <p>13 Q. And the reason the IRS requires the</p> <p>14 plan to spell out the conversion factors is so that</p> <p>15 benefits would continue to be definitely</p> <p>16 determinable and the employer would not have</p> <p>17 discretion with respect to the amount of the</p> <p>18 benefit?</p> <p>19 MR. BASSMAN: Objection. You can</p> <p>20 answer.</p> <p>21 THE WITNESS: I would say the reason</p> <p>22 the IRS requires that they be provided is because</p> <p>23 ERISA requires that, absent spousal consent, a</p> <p>24 pension plan, whether defined contribution or</p>

11 (Pages 38 to 41)



ETHAN E. KRA

<p style="text-align: right;">Page 42</p> <p>1 defined benefit, must pay the benefit for a married  2 participant in the form of a qualified joint and  3 survivor annuity and, therefore, the defined  4 benefit plan must contain factors to convert all  5 forms of benefit into annuities to comply with the  6 requirement that, absent spousal consent, a married  7 participant receive the benefit as a qualified  8 joint and survivor annuity and, absent the  9 individual's consent, for a non-married individual,  10 the benefit be payable as a life annuity.  11 Q. Single-life annuity commencing at  12 age 65?  13 A. A single-life annuity that would be  14 payable at the normal retirement age, as defined in  15 the plan document, which might be other than 65.  16 Q. Did you finish your answer?  17 A. Yes.  18 Q. We talked about some defined benefit  19 plans that expressed the accrued benefit in the  20 form of a lump sum.  21 Is there a name you would normally  22 use for that?  23 A. There are a number of types of plan  24 that would -- in the defined benefit realm that</p>	<p style="text-align: right;">Page 44</p> <p>1 involve pay over the individual's career. For a  2 plan that was cash balance for the entirety of the  3 individual's participation, it would generally be  4 pay over the years in which the individual  5 participated.  6 For a plan that became cash balance  7 part way through the individual's career, there are  8 a number of different ways in which a company could  9 convert from a traditional plan to a cash balance  10 plan.  11 Typically, they would look at pay  12 throughout the career after the date of conversion.  13 How they set up the benefit at the initial date  14 could vary, depending on plan design.  15 Q. Which is why I asked a bad question,  16 because, if a plan didn't start out as a cash  17 balance plan from Day 1, it wouldn't be a career  18 average pay plan because you would have to take  19 account of the prior benefit structure, correct?  20 A. Some plans that convert to cash  21 balance do go back and pick up pay history from  22 date of employment. Others will convert the  23 benefit formula at date of conversion using other  24 methodologies. And the number of methodologies is</p>
<p style="text-align: right;">Page 43</p> <p>1 express the accrued benefit in terms of a lump sum.  2 Pension equity plan, cash balance plan, would  3 represent two varieties or two flavors.  4 Q. How would you contrast, in general  5 terms, a pension equity plan, on the one hand, from  6 a cash balance plan, on the other?  7 A. The typical pension equity plan  8 bases the benefit on usually something approaching  9 final pay or final average pay, could be one year  10 or five years or something in between, and then  11 bases it on other factors, such as age and service  12 and points that are accumulated; whereas, a cash  13 balance plan typically will base the benefit on pay  14 credits that are accumulated each year, and then  15 interest credits that are credited on those pay  16 credits each year, and both of them would then  17 define a benefit payable on a particular date, in  18 terms of a lump sum amount.  19 In a pension equity plan there may  20 also be interest factors.  21 Q. Typically, a cash balance plan is a  22 career average pay plan, as contrasted with a final  23 average pay plan?  24 A. A cash balance plan will typically</p>	<p style="text-align: right;">Page 45</p> <p>1 probably as many as there are plans out there,  2 although some may have used identical methodologies  3 because they had the same person drafting them,  4 designing them or copying them, but there are quite  5 large number of different designs.  6 Q. Now, as you understand it, when we  7 are dealing with defined benefit plans, are there  8 requirements under ERISA that regulate the rate at  9 which the participants' accrued benefit grows?  10 A. ERISA and the Internal Revenue Code  11 have rules on -- rules preventing a plan from doing  12 what's called back-loading. Namely, you cannot do  13 an end-run around the vesting rules by delaying the  14 accrual of benefits to late in the career.  15 There are rules at which -- a plan  16 must satisfy one of three sets of rules, so as to  17 accrue benefits at a reasonable rate early enough  18 in a person's career.  19 Q. And those three tests are 3 percent  20 interest?  21 A. There is a 3 percent test, there is  22 a four-thirds test or the 133 and a third test, and  23 then there is the service proration test.  24 Q. Also known as the fractional test?</p>

12 (Pages 42 to 45)

ETHAN E. KRA

<p style="text-align: right;">Page 46</p> <p>1 A. It's also known as the fractional 2 rule. 3 Q. How does the 3 percent test work? 4 A. You would take the person today, you 5 would project the person's benefit to normal 6 retirement date, assuming no future pay increases, 7 no changes in the cost of living, no changes in the 8 Social Security tax wage base. In fact, everything 9 would remain constant, except the person's service 10 and age. 11 You would then multiple it by 3 12 percent, times the number of years of service the 13 person has had to date, and, if the accrued benefit 14 is greater than that, you pass. If it's not, you 15 don't pass that test. But the requirements are 16 not -- you do not have to pass all three tests. 17 Q. Any one? 18 A. Correct. You only have to pass any 19 one of the tests and you are home free. 20 Q. Now, you kept compensation static 21 under 3 percent. 22 A. Um-hum. 23 Q. And you kept the Social Security 24 wage base --</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. It would be pointless? 2 A. Right. 3 Q. Before we leave 3 percent, can a 4 plan that looks at career pay pass 3 percent, as 5 you understand it? 6 A. My understanding is that the IRS, in 7 reviewing plans that are based on career pay, looks 8 to the four-thirds test. 9 Q. That, at least as far as the IRS is 10 concerned, that's the only one that's going to 11 work? 12 A. That's my -- 13 MR. BASSMAN: Objection. You can 14 answer. 15 BY MR. MALONE: 16 Q. Let me withdraw the question and 17 rephrase it. 18 Your understanding of the IRS's 19 position is that the only one that a career-based 20 pension plan -- defined benefit pension plan can 21 pass is the 133 and a third? 22 A. My understanding is that, in testing 23 a career average defined benefit pension plan, the 24 IRS looks to the four-thirds test as the</p>
<p style="text-align: right;">Page 47</p> <p>1 A. Kept every -- wage base static, CPI 2 static. The cost of living doesn't change. 3 Q. CPI, you meant Consumer Price Index? 4 A. Consumer Price Index, or any other 5 similar factor -- you keep interest rates constant. 6 It's as if the world remains in a 7 constant state, except for the fact that this 8 person is getting older and earning more service. 9 Q. Does the statute or the regulation 10 specifically mention interest rates in the context 11 of fractional? 12 A. I would have to look at that. 13 Q. I was curious, if you kept the age 14 and the service static, could you ever have a plan 15 that passed -- 16 A. I didn't say you keep age and 17 service static. 18 Q. No. I said, if you -- if you kept 19 age and service static, the plan couldn't pass, 20 could it? 21 A. No. If you kept age and service 22 static, then you'd have a hundred percent of the 23 benefit accrued, so you'd always pass, so it would 24 be a vacuous test.</p>	<p style="text-align: right;">Page 49</p> <p>1 appropriate methodology for testing. 2 I have not seen situations where 3 demonstrations have been attempted using other 4 methodologies and if anyone has tried to discuss 5 that with the Service. So, I'm not saying it's the 6 exclusive, but it's the one that we've seen. 7 Q. Let's go to the 133 and a third 8 test, or the four-thirds test. You can use either 9 one, whichever is more comfortable for you. 10 A. Um-hum. 11 Q. How does that work? 12 A. You look at the benefit being 13 accrued in a given year. Benefit accrued in a 14 given year is benefit end of the year minus benefit 15 beginning of the year. The difference represents 16 how much you earned during the year. 17 You then assume that all factors 18 remain constant into the future, such as pay -- the 19 regulations say all factors remaining constant, 20 except, of course, the person has to age and get 21 more service. 22 Q. Do the regs say that? 23 A. I would have to look at them. 24 Q. Okay.</p>

13 (Pages 46 to 49)



ETHAN E. KRA

<p style="text-align: right;">Page 50</p> <p>1 A. But that's the common application of 2 them by all actuaries.</p> <p>3 Q. Because, once again, it wouldn't 4 make any sense -- if you kept the age and the 5 service static, the test wouldn't accomplish 6 anything?</p> <p>7 A. Correct.</p> <p>8 You then look at each year into the 9 future, what is projected to be accrued in each 10 ensuing year, and, under the four-thirds test, the 11 test is passed if no year in the future you accrue 12 a benefit that's more than four-thirds of the 13 benefit you are accruing this year.</p> <p>14 In doing the test -- it's a 15 prospective test only, it is not a retrospective 16 test, so you don't have to look at what happened in 17 the past. So, for example, if a person got a big 18 pay increase, and now is earning a higher benefit, 19 that doesn't ruin the test because -- let's say 20 someone's salary doubles, and our benefit is just a 21 career average 1 percent of pay. The person goes 22 from \$10,000 a year of pay to \$20,000 a year of 23 pay, that year's accrual is \$100 in the year he 24 earns 10,000, 200 in the year he earns 20,000.</p>	<p style="text-align: right;">Page 52</p> <p>1 the benefit earned to date is greater, you pass -- 2 greater than or equal to. If it's less, you fail. 3 So that would be an example.</p> <p>4 Let's assume you gave a benefit that 5 was 2 percent a year for the first ten years, 6 nothing thereafter.</p> <p>7 Q. That would flunk.</p> <p>8 A. That would pass.</p> <p>9 Q. Oh, would it? Okay.</p> <p>10 A. Because -- let's assume the person 11 were going to have 20 years of service. At 12 retirement they would have a 20 percent benefit. 13 As long as they earned 1 percent every year, they 14 pass. So that benefit is front-loaded.</p> <p>15 Q. Okay.</p> <p>16 A. It does not violate back-loading.</p> <p>17 Q. If it was the other way around, it 18 would?</p> <p>19 A. If you gave nothing for the first 20 ten years and 2 percent for the last ten years, 21 that would be a classic back-loaded formula, which 22 Congress intended to prohibit in a qualified plan.</p> <p>23 Q. We've used that technical term, 24 "qualified plan," and we probably ought to put some</p>
<p style="text-align: right;">Page 51</p> <p>1 Two hundred is more than four-thirds 2 of 100.</p> <p>3 Q. Even a lawyer can figure that out.</p> <p>4 A. That does not fail the four-thirds 5 test.</p> <p>6 Q. Because you keep the pay static?</p> <p>7 A. Because the pay went up. And, even 8 if the pay historically has gone up -- that's why 9 we don't look backwards -- because we are only 10 looking prospectively.</p> <p>11 Q. How about the fractional test, which 12 you had another name for, but I can't remember the 13 name you applied?</p> <p>14 A. The fractional test, or the service 15 proration test.</p> <p>16 You project the benefit to normal 17 retirement date. Again, assuming constant factors 18 of compensation, Social Security, et cetera, but 19 projecting continued service, and aging to normal 20 retirement date. You then multiply that benefit by 21 a fraction. The numerator is past credited 22 service, the denominator is total credited service.</p> <p>23 You then get a -- multiply that 24 times the benefit at normal retirement date. If</p>	<p style="text-align: right;">Page 53</p> <p>1 parameters on it. What do you understand by the 2 term "qualified plan," when you use it?</p> <p>3 A. A plan which is -- a pension or 4 profit sharing plan subject to Title 1 of ERISA and 5 subject to the qualification rules of the Internal 6 Revenue Code. It's a legal term that I would 7 really have to defer to counsel to put a better 8 definition around.</p> <p>9 Q. But it's a term you work with on a 10 day-to-day basis?</p> <p>11 A. A term I work with on a day-to-day 12 basis. I know one when I see one, but I'd have to 13 ask a lawyer to define it.</p> <p>14 Q. Now, in a cash balance plan what 15 constitutes the participants' accrued benefit?</p> <p>16 A. Depends on how it's defined in the 17 plan document. Some plan documents will define it 18 equal to the account balance, and then the optional 19 forms will include the annuity, which is defined 20 because it's required. Other plans will define it 21 in terms of the annuity.</p> <p>22 You have to look at a plan document.</p> <p>23 Q. Now, let's take that thought and 24 meld that with our tests that we've been talking</p>

14 (Pages 50 to 53)

ETHAN E. KRA

<p style="text-align: right;">Page 54</p> <p>1 about.</p> <p>2 If an actuary is reviewing a cash</p> <p>3 balance plan to determine whether it comports with</p> <p>4 the back-loading standards and the plan defines the</p> <p>5 accrued benefit as the account balance, how would</p> <p>6 you apply the tests? To the account balance?</p> <p>7 A. In a defined benefit cash balance</p> <p>8 plan -- qualified defined benefit plan, I would do</p> <p>9 the testing on the normal retirement benefit,</p> <p>10 payable as an annuity.</p> <p>11 Q. Even if the plan specified a lump</p> <p>12 sum as the accrued benefit?</p> <p>13 A. I would still base it on the annuity</p> <p>14 form.</p> <p>15 Q. And you would do the same thing if</p> <p>16 the plan, although it was a cash balance plan,</p> <p>17 specified the accrued benefit as the -- as the</p> <p>18 single life --</p> <p>19 A. My understanding is that the</p> <p>20 requirements are that all defined benefit plans</p> <p>21 have back-loading tested on the normal retirement</p> <p>22 annuity. The IRS typically is -- in every test</p> <p>23 that I've seen them require, that's the only thing</p> <p>24 they are willing to look at.</p>	<p style="text-align: right;">Page 56</p> <p>1 the service. So, in other words, you would look at</p> <p>2 the -- not the account balance, but the amount</p> <p>3 added to the account balance on account of the</p> <p>4 service rendered during the year.</p> <p>5 An account balance grows due to two</p> <p>6 factors: An amount attributable to service</p> <p>7 rendered during the year, and an amount</p> <p>8 attributable to an interest or investment credit on</p> <p>9 previous account balances.</p> <p>10 My understanding is, if you are</p> <p>11 looking at the account balance type approach, you</p> <p>12 would look at the amount credited on account of the</p> <p>13 service rendered during the year, otherwise</p> <p>14 colloquially known as the pay credit.</p> <p>15 BY MR. MALONE:</p> <p>16 Q. You would carve out the interest</p> <p>17 credit?</p> <p>18 A. Yes.</p> <p>19 Q. And that's because that's deemed</p> <p>20 accrued in the past, correct?</p> <p>21 A. Correct.</p> <p>22 If you were looking at it on an</p> <p>23 annuity basis, you would look at the change in the</p> <p>24 annuity attributable to service during the year,</p>
<p style="text-align: right;">Page 55</p> <p>1 So, I'm not going to give a legal</p> <p>2 discourse as to whether that's the right answer or</p> <p>3 the wrong answer, but my understanding is that</p> <p>4 that's the only thing the IRS will look at.</p> <p>5 Q. And, on a practical level, if they</p> <p>6 wouldn't look at it, you can't advise a client to</p> <p>7 the contrary?</p> <p>8 A. There are certain things I know I</p> <p>9 can change and certain things I know I can't and,</p> <p>10 if the IRS tells me these are the rules --</p> <p>11 Q. That's what you have to work with?</p> <p>12 A. That's what I have to work with.</p> <p>13 Q. Now, do you have any familiarity</p> <p>14 with the idea of calculating a rate of benefit</p> <p>15 accrual under a defined benefit pension plan?</p> <p>16 MR. BASSMAN: Objection. You can</p> <p>17 answer.</p> <p>18 THE WITNESS: That is a term that I</p> <p>19 believe has been subject to significant litigation</p> <p>20 in quite a few cases, and different judges have</p> <p>21 given differing opinions.</p> <p>22 Some will -- have said that you will</p> <p>23 look at the account balance and look at how that</p> <p>24 changes, or the amount credited to it on account of</p>	<p style="text-align: right;">Page 57</p> <p>1 again carving out all interest factors, which would</p> <p>2 include any interest credited on the account</p> <p>3 balance or any change in the interest rate due to</p> <p>4 external forces not under the control of the plan</p> <p>5 sponsor.</p> <p>6 So, for example, if I'm CitiGroup,</p> <p>7 and I have a cash balance pension plan, if I tie</p> <p>8 the interest crediting rate to the CitiGroup prime</p> <p>9 interest rate, that's under my control; whereas, if</p> <p>10 I tie it to J.P. Morgan's, Chase's prime rate,</p> <p>11 that's not under my control. Or, if I tie it to</p> <p>12 Treasury's, that's not under my control.</p> <p>13 So, as long as it's something not</p> <p>14 under my control, as a plan sponsor, and it's</p> <p>15 attributable to prior accruals, that's not a part</p> <p>16 of this year's accrual. So, anything affected by</p> <p>17 interest on prior accruals is part of the past, the</p> <p>18 old accrued benefit; anything attributable to</p> <p>19 amounts being credited on account of service</p> <p>20 rendered or paid during the current year is part of</p> <p>21 this year's accrual.</p> <p>22 Q. Does that complete your answer?</p> <p>23 A. I think so.</p> <p>24 Q. Okay.</p>

15 (Pages 54 to 57)

ETHAN E. KRA

<p style="text-align: right;">Page 58</p> <p>1 A. Sorry if I'm too complete.</p> <p>2 Q. No, you are not too complete, but,</p> <p>3 when somebody gives a long answer and they pause,</p> <p>4 I'm never quite sure whether they are catching</p> <p>5 their breath or they need some more water and they</p> <p>6 have more to say, or whether they are done, so,</p> <p>7 every once in a while, I will ask you if you've</p> <p>8 completed your answer. It doesn't mean I have a</p> <p>9 problem with your answer, I'm not being critical.</p> <p>10 I'm just trying to make sure that I have your</p> <p>11 answer out on the table before I try and grapple</p> <p>12 with it, okay?</p> <p>13 A. Certainly.</p> <p>14 Q. Approximately how many hours did</p> <p>15 your team at Mercer work on this case, do you know?</p> <p>16 A. Don't have the time records.</p> <p>17 Haven't checked.</p> <p>18 Q. Can you give me a reasonable</p> <p>19 estimate?</p> <p>20 A. Somewhere between 20 and 40. Don't</p> <p>21 know.</p> <p>22 I need to restate that. Maybe 25 to</p> <p>23 50.</p> <p>24 Q. That includes the entire team?</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. And you made a diligent search of</p> <p>2 your files?</p> <p>3 A. What I did is I took my file, or my</p> <p>4 secretary brought me my file, I looked at it and</p> <p>5 said, "Make me a copy and send it to Barak." I did</p> <p>6 not go through and check every page to make sure</p> <p>7 she Xeroxed diligently, but my presumption is that</p> <p>8 she did that task and sent it off.</p> <p>9 Q. Did you review Plaintiffs' 31 as</p> <p>10 part of your work?</p> <p>11 A. I read through it before we started</p> <p>12 the work.</p> <p>13 Q. Let me direct your attention --</p> <p>14 there is just a few pages I have a couple questions</p> <p>15 on. If you would go to Page 5 of Plaintiffs' 31,</p> <p>16 which would be KRA 00343.</p> <p>17 A. Yes.</p> <p>18 Q. There is handwriting there?</p> <p>19 A. Yes.</p> <p>20 Q. Is that your handwriting?</p> <p>21 A. No.</p> <p>22 Q. Do you know whose it is?</p> <p>23 A. I believe it was there when I</p> <p>24 received the document.</p>
<p style="text-align: right;">Page 59</p> <p>1 A. Yes. That's just an estimate.</p> <p>2 Q. I understand.</p> <p>3 A. I mean, if it was 55, I'm not guilty</p> <p>4 of perjury.</p> <p>5 Q. I understand. You've labeled this</p> <p>6 an estimate, I asked you for a reasonable estimate</p> <p>7 because you didn't know the right answer, so I'm</p> <p>8 stuck with the fact that it's an estimate, and</p> <p>9 that's fine.</p> <p>10 (Exhibit P-31 is marked for</p> <p>11 identification.)</p> <p>12 BY MR. MALONE:</p> <p>13 Q. The court reporter has handed you a</p> <p>14 document that's been marked Plaintiffs' Exhibit 31</p> <p>15 for identification purposes.</p> <p>16 Do you see at the bottom it's got</p> <p>17 KRA 00338?</p> <p>18 A. Yes.</p> <p>19 Q. This came from your files?</p> <p>20 A. Yes.</p> <p>21 Q. You understood that you were</p> <p>22 supposed to produce all of your records with</p> <p>23 respect to this engagement?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 61</p> <p>1 Q. So, it's not somebody at Mercer?</p> <p>2 A. Not to my knowledge.</p> <p>3 Q. How about Page 6?</p> <p>4 A. I believe that was there when I</p> <p>5 received it.</p> <p>6 Q. How about Page 10?</p> <p>7 A. I believe that was there when I</p> <p>8 received it.</p> <p>9 Q. And Page 11?</p> <p>10 A. I can't tell whether that is my</p> <p>11 writing or somebody else's when I got it. I don't</p> <p>12 know.</p> <p>13 Q. Do you remember specifically reading</p> <p>14 31?</p> <p>15 A. I remember looking through a whole</p> <p>16 pile of documents at the beginning, and I don't</p> <p>17 recall which one was which, but I would -- I make</p> <p>18 it a policy, when I get all the documents --</p> <p>19 Q. You want to look at everything at</p> <p>20 least once?</p> <p>21 A. I want to look at everything once,</p> <p>22 get a flavor of what's going on.</p> <p>23 (Exhibit P-32 is marked for</p> <p>24 identification.)</p>

16 (Pages 58 to 61)

ETHAN E. KRA

<p style="text-align: right;">Page 62</p> <p>1 BY MR. MALONE:</p> <p>2 Q. The court reporter has handed you</p> <p>3 what we've marked Plaintiffs' 32. This, again,</p> <p>4 came from your files. It appears to be an E-Mail</p> <p>5 printed off from your desktop and it has an</p> <p>6 attachment to it of what appears to me to be an</p> <p>7 Excel spreadsheet.</p> <p>8 Can you take a look at this and see</p> <p>9 if you've seen this before?</p> <p>10 A. Yes.</p> <p>11 Q. First of all, do the E-Mail and the</p> <p>12 spreadsheet belong together?</p> <p>13 A. I believe so.</p> <p>14 Q. What does Plaintiffs' 32 comprise?</p> <p>15 A. It's a cover E-Mail from Susan</p> <p>16 Hoffman, counsel --</p> <p>17 Q. Distinguished counsel, please.</p> <p>18 A. Distinguished counsel.</p> <p>19 -- to me, with an attached Excel</p> <p>20 workbook that has data in it.</p> <p>21 Q. And is this data, which begins at</p> <p>22 KRA 00124 -- is this information that you relied</p> <p>23 upon in your work in this case?</p> <p>24 A. This was part of the data that we</p>	<p style="text-align: right;">Page 64</p> <p>1 that that was material for our analysis.</p> <p>2 Q. Normal retirement date.</p> <p>3 A. That would be the first of the</p> <p>4 month, coinciding with the next following -- the</p> <p>5 attainment of age 65.</p> <p>6 Q. So, for Mr. Charles here, it would</p> <p>7 appear that his birthday was in October, because</p> <p>8 his normal retirement date falls in November, is</p> <p>9 that correct?</p> <p>10 A. Either it was October or, if the</p> <p>11 rounding was such that he was born November 5th,</p> <p>12 they are off by a month.</p> <p>13 Q. And age 65, as you understand it, is</p> <p>14 the normal retirement date under the cash balance</p> <p>15 sub-plan?</p> <p>16 A. My understanding is that that is the</p> <p>17 normal retirement date as defined in the current</p> <p>18 plan document.</p> <p>19 Q. Do you know whether it was the same</p> <p>20 in the predecessor plan document?</p> <p>21 A. I would have to go back and look at</p> <p>22 it again. I would prefer to review the document</p> <p>23 before shooting from the hip.</p> <p>24 Q. And then there is an early</p>
<p style="text-align: right;">Page 63</p> <p>1 used in preparing our report.</p> <p>2 Q. Now, on 124 we've got Mr. Charles?</p> <p>3 A. Yes.</p> <p>4 Q. And at the -- well, turning the page</p> <p>5 landscape-wise, as you and I both have so we can</p> <p>6 actually read the numbers, in the left-hand column</p> <p>7 there are a series of phrases there.</p> <p>8 A. Yes.</p> <p>9 Q. Determination date, what do you</p> <p>10 understand that to mean?</p> <p>11 A. Data as of a given date. This page,</p> <p>12 my understanding is, represents a report of data as</p> <p>13 of nine different dates, each represented by a</p> <p>14 column of numbers.</p> <p>15 Q. And each headed by a year?</p> <p>16 A. Each headed by a year, and</p> <p>17 determination date represents the date within that</p> <p>18 year as of which the information was determined.</p> <p>19 Q. And the next one down is age of</p> <p>20 determination date. That's pretty straightforward.</p> <p>21 A. That we used to determine an</p> <p>22 estimate of the date of birth, and used that as a</p> <p>23 proxy for age. It looked as if most of these were</p> <p>24 rounded to the nearest month, and we did not feel</p>	<p style="text-align: right;">Page 65</p> <p>1 retirement date.</p> <p>2 A. Yes.</p> <p>3 Q. And what's your understanding of</p> <p>4 that date?</p> <p>5 A. Until he's attained his earliest</p> <p>6 possible retirement date, it shows the date -- the</p> <p>7 earliest date at which he could retire.</p> <p>8 Once the determination date is after</p> <p>9 that date -- he can't retire retrospectively -- so</p> <p>10 it shows the current date.</p> <p>11 Q. And age as of ERD is pretty much</p> <p>12 self-explanatory.</p> <p>13 A. Yes.</p> <p>14 Q. Credited service, what do you</p> <p>15 understand that number to reflect?</p> <p>16 A. It says, "Credited service for the</p> <p>17 prior plan."</p> <p>18 Q. Okay.</p> <p>19 A. So, this plan is the successor to</p> <p>20 another plan, and that other plan document had,</p> <p>21 within the four corners of the document, a</p> <p>22 definition of credited service. This, to my</p> <p>23 understanding, is the service that would be</p> <p>24 determined as credited service under the</p>

17 (Pages 62 to 65)

ETHAN E. KRA

<p style="text-align: right;">Page 66</p> <p>1 definitions of that plan document, as of the 2 determination date. 3 Q. Now, I was looking at Mr. Charles' 4 numbers here under credited service and, in the 5 first left-hand column of numbers, for 1999, we go 6 19.312 in credited service. 7 Do you see that, sir? 8 A. Yes. 9 Q. In 2000 the same entry is 20.3083, 10 and then the following year is 21.3087. Is there 11 any particular reason for that variance? 12 A. -- I would not know and, since the 13 difference was such a minuscule amount, it was 14 just -- 15 Q. Not material? 16 A. -- not material to any analysis that 17 I was doing, and, so, I gave it no concern. 18 Q. Okay. 19 A. The difference, for example, between 20 19.312, if I were to add one to it, would get 21 20.312. The difference between that and 20.3083 is 22 less than .004 of a year, which is about two days. 23 Not significant in crediting service. 24 Q. Okay.</p>	<p style="text-align: right;">Page 68</p> <p>1 right, each number appears in the next column one 2 row lower. 3 Q. I had the same reaction when I 4 looked at it. 5 Obviously, you looked at the numbers 6 to see if they foot. Did you do any other tests on 7 this data to see whether it was accurate? 8 A. Checked that the ages moved up and 9 that they were all consistent, but, other than 10 that, we had no data source to check this against. 11 (Exhibit P-33 is marked for 12 identification.) 13 BY MR. MALONE: 14 Q. The court reporter has handed you 15 Plaintiff's 33, which is a single-page document, 16 bearing JMC 00008. Why don't you take a moment to 17 look at that. 18 You've had a minute to review 19 Plaintiffs' 33? 20 A. Yes. 21 Q. The first thing you did was to get 22 your pencil out and made sure the numbers matched 23 back to Plaintiffs' 32? 24 A. I looked at that.</p>
<p style="text-align: right;">Page 67</p> <p>1 Now, going back to the words and 2 away from the numbers, final average pay for the 3 prior plan, what do you understand the significance 4 of that to be. 5 A. That would be the -- using the 6 definition of compensation under the pre-cash 7 balance plan, what would that individual's final 8 average pay have been, had that plan been continued 9 unchanged. 10 Q. And the predecessor plan was the 11 final average pay plan? 12 A. I believe so. 13 Q. And then, below that, there is no 14 actual label, but, if you look in each column, 15 there is a series of numbers, starting with 16 54,204.90 in the 1999 column, and going down. 17 What did you understand those to 18 reflect? 19 A. My understanding of those numbers 20 were that they represented the prior five years 21 compensation as defined in the prior plan document, 22 so that 55,873.85 represented the average of the 23 five numbers that appear below it, and that was 24 consistent with the fact that, as we move to the</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. There is a variance there, for 2 credited service, between 32 and 33. Do you see 3 that? 4 A. Yes. 5 Q. Is that material to you? 6 A. No. The difference is .0025 years, 7 which is approximately one day. 8 Q. In fact, it might just be the 9 difference between December 31st of 1998 and 10 January 1 of 1999. 11 A. Very well could be. 12 Q. Okay. 13 A. I don't know. 14 Q. Did you receive Plaintiff's 33? 15 A. I do not believe I've ever seen this 16 document before today. 17 MR. MALONE: That's all I have for 18 you on 33. 19 Plaintiffs' 34. 20 (Exhibit P-34 is marked for 21 identification.) 22 (Recess called at 10:29 a.m.) 23 (Resumed at 10:38 a.m.) 24 MR. MALONE: Let's go back on the</p>

18 (Pages 66 to 69)



ETHAN E. KRA

<p style="text-align: right;">Page 70</p> <p>1 record.  2 BY MR. MALONE:  3 Q. Mr. Kra, the court reporter has  4 handed you what we've marked Plaintiffs' 34 for  5 identification purposes.  6 Can you tell me what this is?  7 A. This is a set of computer printouts  8 that we sent to counsel as part of discovery.  9 Q. What role did Plaintiffs' 34 have in  10 your work in this case?  11 A. Before I can answer that, I would  12 need to have a copy of my expert report in front of  13 me.  14 Q. That's fair. We can do that for  15 you. I was going to get around to marking that one  16 of these days.  17 A. Sorry. I need that.  18 Q. I'd rather have you answer it  19 accurately now, than get your deposition transcript  20 back with a lot of scribbling over it and then have  21 to worry about whether we have to come back and  22 have another session.  23 (Exhibit P-35 is marked for  24 identification.)</p>	<p style="text-align: right;">Page 72</p> <p>1 P-34?  2 A. This was prepared, under my  3 direction, by Bruce Cadenhead, and, under his  4 direction, by Stephane Bonin.  5 Q. And what do you understand the  6 purpose of Plaintiffs' 34 to be?  7 A. What this did was, I had calculated  8 the accrued benefit at January 1, 1999, based on  9 the old plan document, pre-cash balance, and on  10 January 1, 1999, based on immediately the new plan  11 document, which reflected the conversion from a  12 final pay formula to a cash balance formula, and  13 also determined the projected benefit at normal  14 retirement date, as of that date, assuming pay  15 could remain constant.  16 Q. I'm just looking for something. I'm  17 not ignoring you. There was something in here  18 that --  19 A. In determining the projected cash  20 balance benefit, we used the actual compensation  21 received during 1999, because that was under a  22 different definition than the old plan document,  23 and I did not have 1998 pay using the cash balance  24 definition of compensation.</p>
<p style="text-align: right;">Page 71</p> <p>1 BY MR. MALONE:  2 Q. Let the record reflect that the  3 witness is examining the first page of Plaintiffs'  4 33 and comparing it --  5 A. 34.  6 Q. 34, thank you, and comparing it to  7 the tables that appear in the body of Plaintiffs'  8 35.  9 You had an opportunity to look at 34  10 and look at 35.  11 A. Yes.  12 Q. Can you tell me what role 34 played  13 in your work?  14 A. There are numbers that appear on  15 this page --  16 Q. This page being the first page of --  17 A. The first page of P-34, which appear  18 in my expert report.  19 Q. Okay.  20 A. And, so, this page was used in the  21 development of opinions in the expert report.  22 Q. Can we call this a workpaper?  23 A. This is an Excel spreadsheet.  24 Q. Who was responsible for preparing</p>	<p style="text-align: right;">Page 73</p> <p>1 Q. Actually, this is Mr. Troup. You  2 may want to check your expert report. I think what  3 you are going to find is that, for Mr. Troup, the  4 definition of compensation is the same --  5 A. Okay.  6 Q. -- but you are the expert on --  7 A. I would have to go back and  8 double-check that.  9 Q. Yes, but I think that where the  10 definitional difference appears is between the ACE  11 plan and the cash balance sub-plan.  12 A. Okay. Then I may -- but, I believe  13 we used the same methodology for all of the -- we  14 used 1999 pay, because that was what was actually  15 used in the cash balance calculations.  16 Q. I'm going to mark another document,  17 but we are not going to leave this one, so hang on  18 to 34 and you may want to have 35 handy to....  19 (Exhibit P-36 is marked for  20 identification.)  21 BY MR. MALONE:  22 Q. Now, the court reporter has handed  23 you what we've marked as Plaintiffs' 36. A single  24 piece of paper, appears to be an E-Mail, it was</p>

19 (Pages 70 to 73)



ETHAN E. KRA

<p style="text-align: right;">Page 74</p> <p>1 produced from your files, KRA 00043.  2 A. And --  3 Q. We can do a couple things with this.  4 It's from Stephane?  5 A. Yes.  6 Q. There is a link in the E-Mail. Do  7 you see that?  8 A. Yes.  9 Q. Do you know, as you sit here today,  10 whether the link that's in Stephane's E-Mail, which  11 is Plaintiffs' 36, is the spreadsheet which is  12 Plaintiffs' 34?  13 A. What we -- I do not know which --  14 whether it's -- I believe 4 is the final one, but  15 I'd have to go back to the files and check whether  16 it was -- whether we had 3 and 4 or 4 and 5.  17 I don't recall.  18 Q. There were a series of spreadsheets  19 created in Excel as part of your team's work on  20 this case?  21 A. Yes.  22 Q. Were they revisions of -- did they  23 reflect an evolving document or do they reflect  24 different series of documents?</p>	<p style="text-align: right;">Page 76</p> <p>1 A. Yes.  2 Q. Let's go back to 34 now, and let's  3 see if we can spend some time with this, just to  4 make sure I understand what this document reflects.  5 A. Um-hum.  6 Q. Holding the page landscape-wise, so  7 we can all read the numbers and columns, the  8 extreme left-hand column names the rows that appear  9 across, and the first thing it says is "Record."  10 What does that mean?  11 A. Probably -- I'm only speculating --  12 that we input the data into our system, four people  13 four records. This is the first page. Check the  14 others, see if the --  15 Q. If you go to 417, you'll see that's  16 2, and, if you go to 420 -- it's really hard to  17 read, but I think it might be 3.  18 A. I'm just speculating that the four  19 individuals are numbered 1 through 4. It's easier  20 to program numbers than names.  21 Q. Than names, sure.  22 Then there is a year?  23 A. Yes.  24 Q. Is that 1998?</p>
<p style="text-align: right;">Page 75</p> <p>1 A. They reflected my correcting their  2 earlier work. In other words, Stephane did it,  3 Bruce reviewed it, he found a mistake, then he went  4 to Version 2. Then it got to me, I said, "No,  5 that's not what I meant. This is what it is," then  6 began the next version, until, finally, I said,  7 "That's what I meant."  8 Q. Okay.  9 Now, with that out of the way, I  10 think we can dispose of 36 for a while. I don't  11 think we need that anymore.  12 Can you tell me whether 34 is the  13 final version of the Excel spreadsheet that was  14 generated by your team in the course of this  15 engagement?  16 A. I believe that it was. It has the  17 numbers that I used.  18 Q. In other words, previously, when you  19 were looking at your report, what you were doing  20 was trying to verify whether some of the numbers on  21 34 made their way into the report?  22 A. Yes.  23 Q. And, based on that, at least you can  24 infer that this is the final version?</p>	<p style="text-align: right;">Page 77</p> <p>1 A. I think it's 1999, but I can't read  2 it.  3 Q. Then it says, "Use year-end  4 factors," and it says, "False."  5 Do you know what that means?  6 A. I am not sure which the name is, but  7 one issue that came up in doing this analysis,  8 which led to my correcting what they had previously  9 done, is, in doing the analysis for a given year,  10 originally Bruce thought, Well, when I come to the  11 end of the year, I already know next year's Social  12 Security wage base, I should already program that  13 in, and I said, "No."  14 So, it's true and false, whether you  15 recognize what's known at the end of the year for  16 the ensuing year, the factors that change, or do  17 you base it on the current year factors.  18 Q. Okay.  19 A. So, I believe what that was is he  20 programmed it so he could use the same spreadsheet  21 and calculate it both ways, but I said that my  22 analysis is based on the current year, I don't have  23 a crystal ball where I look into future years, I  24 don't recognize future years until they actually</p>

20 (Pages 74 to 77)

ETHAN E. KRA

<p style="text-align: right;">Page 78</p> <p>1 come to transpire.</p> <p>2 Q. Then we have the name, estimated</p> <p>3 date of birth, which is self-explanatory.</p> <p>4 What is the projected cash balance</p> <p>5 benefit?</p> <p>6 A. That would represent what we are</p> <p>7 projecting this individual to have as the cash</p> <p>8 balance benefit, payable as an annuity on his</p> <p>9 normal retirement date, assuming all of the factors</p> <p>10 remain constant.</p> <p>11 Q. So that would be the annual amount</p> <p>12 of a single-life annuity?</p> <p>13 A. Single-life, or whatever form is</p> <p>14 payable under the plan. I'd have to check whether</p> <p>15 the plan offers a free five-year certain, or</p> <p>16 whatever type of optional form, but, whatever the</p> <p>17 form is under the plan document, that would be the</p> <p>18 life annuity, under the plan formula, using the</p> <p>19 conversion factors in the plan document, so that I</p> <p>20 can make an apples-to-apples comparison of either</p> <p>21 annuity to annuity or lump sum to lump sum. I</p> <p>22 can't compare a lump sum to annuity. Those are</p> <p>23 non-comparable benefits.</p> <p>24 Q. And that's an annual figure there,</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. And, when you use the phrase,</p> <p>2 "optional form of benefit," that includes a joint</p> <p>3 and survivor, even though technically that may be</p> <p>4 required, depending on the particular circumstances</p> <p>5 of the individual?</p> <p>6 A. Correct.</p> <p>7 Q. Okay.</p> <p>8 As part of your work, did you come</p> <p>9 to form an understanding of how opening balances</p> <p>10 were calculated for participants that were -- let</p> <p>11 me back up and lay some groundwork and some</p> <p>12 foundation. Otherwise, it's not going to be a very</p> <p>13 good question.</p> <p>14 You understood that this case</p> <p>15 involved the Conectiv retirement plan, is that</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. And you understood that the Conectiv</p> <p>19 retirement plan had various sub-plans, is that</p> <p>20 correct?</p> <p>21 A. Yes.</p> <p>22 Q. And you understood that the one</p> <p>23 sub-plan of particular interest to us here is the</p> <p>24 cash balance sub-plan, is that correct?</p>
<p style="text-align: right;">Page 79</p> <p>1 the 38,278.10, is that correct?</p> <p>2 A. That's correct. I have not worried</p> <p>3 about whether it's exactly divisible by 12 and</p> <p>4 there is a fraction of a bene.</p> <p>5 Q. And beneath that is a projected</p> <p>6 final pay benefit of, in this instance, 28,982.51,</p> <p>7 if I'm reading it correctly.</p> <p>8 A. Yes, 28,982.51.</p> <p>9 Q. What does that represent?</p> <p>10 A. That represents, had the old plan</p> <p>11 continued under the same conditions that I just</p> <p>12 described, what the annual benefit payable at</p> <p>13 normal retirement date would have been, as an</p> <p>14 annual benefit, and divide by 12 to get the monthly</p> <p>15 check.</p> <p>16 Q. And this would have been the</p> <p>17 standard normal retirement benefit under the terms</p> <p>18 of the old plan?</p> <p>19 A. Correct.</p> <p>20 Q. In other words, this is not</p> <p>21 reflective of the value of the joint and survivor?</p> <p>22 A. This is whatever the formula under</p> <p>23 the plan would give, before adjustment for any</p> <p>24 optional form of benefit.</p>	<p style="text-align: right;">Page 81</p> <p>1 A. Correct.</p> <p>2 Q. And you understood that the Conectiv</p> <p>3 retirement plan was formed by reason of the merger</p> <p>4 of two predecessor plans, is that correct?</p> <p>5 A. Correct.</p> <p>6 Q. And one of those was sponsored by</p> <p>7 Atlantic City Electric, is that correct?</p> <p>8 A. Correct.</p> <p>9 Q. Is that the plan you worked on way</p> <p>10 back when?</p> <p>11 A. 1975.</p> <p>12 Q. And the other one was sponsored by</p> <p>13 Delmarva, is that correct?</p> <p>14 A. Correct.</p> <p>15 Q. And the two predecessor -- or can we</p> <p>16 call them heritage plans? Is that a comfortable --</p> <p>17 A. That's fine.</p> <p>18 Q. Okay.</p> <p>19 The two heritage plans were both</p> <p>20 final average pay plans?</p> <p>21 A. I believe so.</p> <p>22 Q. Okay.</p> <p>23 Did they have --</p> <p>24 A. With respect to the employees that</p>

21 (Pages 78 to 81)

ETHAN E. KRA

<p style="text-align: right;">Page 82</p> <p>1 went into the cash balance plan.  2 Q. Right. Thank you for that  3 qualification.  4 Now, some defined benefit pension  5 plans, in addition to offering an annuity  6 commencing at age 65, also offer an early  7 retirement benefit, is that correct?  8 A. Correct.  9 Q. And sometimes they are subsidized,  10 is that correct?  11 A. Correct.  12 Q. And an example of a subsidized early  13 retirement benefit might be a plan that says, "Here  14 is my accrued benefit. It's a thousand dollars  15 this year, as a single-life annuity at age 65. If  16 I have sufficient years of service, and I've  17 reached age 65, I can receive that same amount  18 commencing at age 55 without actuarial reduction."  19 Is that a subsidy, as you  20 understood --  21 A. You said, if I reach age 65.  22 Q. Oh, I worked so hard on that  23 question. Let me try it again. Thank you for  24 making me be precise.</p>	<p style="text-align: right;">Page 84</p> <p>1 40 percent, or 600?  2 A. 400.  3 Q. So the value of the subsidy, then,  4 would be the 60 percent?  5 A. In that particular fact pattern.  6 Q. Now, did these two heritage plans  7 have subsidized early retirement benefits?  8 A. I believe so.  9 Q. Do you recall, in general terms --  10 A. I do not recall the detail. I'd  11 have to look at the plan document.  12 Q. Do you know what happened to the  13 subsidized early retirement benefits, as part of  14 the conversion?  15 MR. BASSMAN: Objection. You can  16 answer.  17 THE WITNESS: I would have to look  18 at the conversion factors. I believe that the  19 opening balance reflected some or all -- I would  20 not -- I'd have to look at the factors -- reflected  21 some early retirement subsidy.  22 BY MR. MALONE:  23 Q. Do you know whether one of the plans  24 had a subsidized joint and survivor annuity?</p>
<p style="text-align: right;">Page 83</p> <p>1 An example of a subsidized early  2 retirement benefit might be a plan which permits a  3 participant to leave at age 55, receiving monthly  4 pension payments that are equal to the value of his  5 dollar amount of age 65 annuity without any  6 actuarial reduction?  7 A. That would represent a significant  8 subsidy in a benefit formula.  9 Q. Is there a rule of thumb that  10 actuaries have that -- for example, if a  11 participant came and the plan didn't have a  12 subsidy, and they wanted advice, I'd like to leave  13 at 55, and my age 65 accrued benefit is a thousand  14 dollars, is there some rule of thumb that would let  15 you tell them how much they would actually get if  16 they left early?  17 A. It depends on the interest rate and  18 the mortality table. The factors could be anywhere  19 from -- the age 55 actuarial equivalent to an age  20 65 benefit might be a factor of somewhere around  21 40 percent.  22 Q. So that, in my example, if the  23 participant came, and his benefit was -- at age 65  24 was a thousand, would he get 400, under the</p>	<p style="text-align: right;">Page 85</p> <p>1 A. I'd have to look at the document  2 to --  3 Q. Now, let's go back to the first page  4 of Plaintiffs 34 and make sure that I understand  5 how this document works and what it reflects.  6 As we move down the left-hand  7 column, we've got a boldface section that says,  8 "Conectiv Cash Balance Sub-Plan." Do you see that,  9 sir?  10 A. Yes.  11 Q. And then further down we have,  12 "Prior Plan," also in bold. Do you see that, sir?  13 A. Yes.  14 Q. Am I correct, then, that the segment  15 that comes under the first bold heading, "Conectiv  16 Cash Balance Sub-Plan," reflects your analysis of  17 the relevant factors that would tell you what Mr.  18 Troup's accrued benefit, under the terms of the  19 Conectiv cash balance sub-plan, were as of any  20 particular determination date?  21 A. What this says is, under the  22 Conectiv -- given the compensation that we have  23 here, remaining constant, we are calculating out  24 the cash balance, and, assuming interest rates</p>

22 (Pages 82 to 85)

ETHAN E. KRA

<p style="text-align: right;">Page 86</p> <p>1 remain constant, we are calculating out the cash 2 balance account and projecting it out. 3 Q. Okay. 4 And then, when we come down to prior 5 plan, you've got Arabic 2, in bold "Prior Plan," 6 and in this instance it's Delmarva, this reflects 7 your calculation, as of particular determination 8 dates, of what the accrued benefit for Mr. Troup 9 would have been, if he had stayed in the old plan, 10 is that correct? 11 A. This is the benefit under the old 12 plan, representing his service to that date. So, 13 we have his pay, final average pay, credited 14 service, the average Social Security wages which 15 were used in the calculation under the plan 16 document, wages subject to Social Security, and 17 then we have -- 18 Q. Was there a differential multiplier 19 under Delmarva for that? 20 A. I believe that there was some 21 differential. I'd have to look back at the plan 22 document. 23 Q. Okay. 24 A. But, what we did is, we took the</p>	<p style="text-align: right;">Page 88</p> <p>1 then it will do all of the things that we need it 2 to do. 3 Q. And you found that system 4 historically to be reliable? 5 A. It's very reliable, because it's 6 used uniformly across the entire United States. 7 That means every Mercer actuary and analyst is 8 using it. If there were a mistake -- it's 9 maintained from one central place. If there is a 10 mistake, when that gets found, it goes straight 11 back to the central place, fix it or else, and get 12 it out -- fixed immediately. 13 So, when you have a few thousand 14 people using the same tools, they are all checking 15 it, they are all making sure it's right. 16 Q. Now, looking under the Conectiv cash 17 balance sub-plan section of the first page of P-34, 18 you have an interest crediting rate, is that 19 correct? 20 A. Yes. 21 Q. What did you understand to be the 22 interest crediting rate under the cash balance 23 sub-plan? 24 A. My understanding is that there is an</p>
<p style="text-align: right;">Page 87</p> <p>1 plan document, applied the relevant factors -- in 2 our internal computer systems we have historical 3 Social Security wage bases, so there are certain 4 factors that our software calls up from the general 5 Mercer -- I want to call it bank of software that's 6 in our network, which would include historical 7 Social Security wage bases, give it a mortality 8 table and an interest rate conversion factor to 9 convert between lump sums and annuities. 10 So that we don't have to reprogram 11 that every time we do an assignment, we have a -- I 12 don't know what to call it -- add-ins or bank of 13 software that -- 14 Q. It's like a template. 15 A. Well, Excel actually goes out 16 into -- 17 Q. It's cross-linked to a database and 18 then it updates itself, correct? 19 A. It cross-links to a database and 20 calculation -- not just the database, but 21 calculation formulas that can then be brought in 22 that are part of our standard actuarial repertoire 23 that don't vary from plan to plan. We would put an 24 interest rate or a name of a mortality table, and</p>	<p style="text-align: right;">Page 89</p> <p>1 interest crediting rate under the plan document, 2 but, instead of having to calculate that, we 3 actually got statements showing what the interest 4 credits were. 5 We checked that against our 6 historical interest files, and found them -- I 7 mean, we didn't worry about -- I didn't check to 8 make sure it was down to the last decimal point, 9 but they were reasonably close to what our 10 databanks showed as interest rates for that era, 11 and 5.01, which was on the sheet that we got 12 from -- I believe it's Vanguard that does the 13 recordkeeping, matched it up, plugged it in our 14 spreadsheet. 15 Q. Do you know what the source -- 16 underlying source of that 5.01 percent is? Do you 17 remember? 18 A. I would have to check the plan 19 document, but I believe it's tied to some 20 government interest rate. 21 (Exhibit P-37 is marked for 22 identification.) 23 BY MR. MALONE: 24 Q. The court reporter has handed you a</p>

23 (Pages 86 to 89)

ETHAN E. KRA

<p style="text-align: right;">Page 90</p> <p>1 document that we've marked as Plaintiffs'</p> <p>2 Exhibit 37 for identification.</p> <p>3 Let me direct your attention, if I</p> <p>4 might, just to save some time, to Page KRA 00187,</p> <p>5 and specifically to Paragraph 1.30.</p> <p>6 Do you see that, sir?</p> <p>7 A. Yes.</p> <p>8 Q. And this indicates that the interest</p> <p>9 crediting rate under the cash balance sub-plan</p> <p>10 constitutes the 30-year Treasury bond rate for the</p> <p>11 October immediately preceding the beginning of the</p> <p>12 Plan Year.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Does that refresh your recollection</p> <p>16 as to what the 5.01 percent appearing in the</p> <p>17 interest credit was?</p> <p>18 A. Yes. That would then represent the</p> <p>19 30-year Treasury bond rate for October of 1998.</p> <p>20 Q. And you applied that on a static</p> <p>21 basis to each subsequent year, is that correct?</p> <p>22 A. Yes. Because, if we were doing this</p> <p>23 in 1999, we would have no idea which way interest</p> <p>24 rates would be going for future years.</p>	<p style="text-align: right;">Page 92</p> <p>1 for you, which is, is the number calculated, under</p> <p>2 your model for Mr. Ward, as a balance for --</p> <p>3 opening balance for 1-1-2003 -- is that number</p> <p>4 consistent with what would be on his year-end</p> <p>5 statement for 2002?</p> <p>6 A. Start again. The -- please repeat</p> <p>7 the question.</p> <p>8 Q. Let me break it down to you, because</p> <p>9 I have to lay some foundation. That's part of why</p> <p>10 it wasn't a good question.</p> <p>11 Under this plan, participants got</p> <p>12 statements that reflected the balance of their</p> <p>13 account at the end of a particular plan year,</p> <p>14 correct?</p> <p>15 A. They got statements annually. I</p> <p>16 believe it was as of year-end.</p> <p>17 MR. MALONE: Let's mark one. Let's</p> <p>18 try and do in a nice, neat, tidy way, and see if we</p> <p>19 can't generate a halfway decent record.</p> <p>20 (Exhibit P-38 is marked for</p> <p>21 identification.)</p> <p>22 BY MR. MALONE:</p> <p>23 Q. The court reporter has handed you a</p> <p>24 document we've marked Plaintiffs' Exhibit 38. That</p>
<p style="text-align: right;">Page 91</p> <p>1 MR. MALONE: Move to strike the</p> <p>2 balance of the response after "Yes."</p> <p>3 BY MR. MALONE:</p> <p>4 Q. Let me direct your attention, then,</p> <p>5 to the years of service. That changes each year,</p> <p>6 as he works another year, is that correct?</p> <p>7 A. Correct.</p> <p>8 Q. And his age increases?</p> <p>9 A. Yes.</p> <p>10 Q. Now, did you get statements from the</p> <p>11 various participants for multiple years?</p> <p>12 A. We got statements from the cash</p> <p>13 balance recordkeeper for a number of different</p> <p>14 years.</p> <p>15 Q. Okay.</p> <p>16 Under this model, would you expect</p> <p>17 the cash balance figure that is -- let's do this.</p> <p>18 Let's take Mr. Ward, who you'll find on 417, and</p> <p>19 let's look at 2002 for a second.</p> <p>20 Let the record reflect that the</p> <p>21 witness is comparing Plaintiffs' 34 back against</p> <p>22 his report, which I believe is Plaintiffs' 35.</p> <p>23 A. 35, yes.</p> <p>24 Q. I have a relatively simple question</p>	<p style="text-align: right;">Page 93</p> <p>1 came out of your file, because it has a Bates</p> <p>2 number with your name on it.</p> <p>3 A. Yes.</p> <p>4 Q. This is a statement for Mr. Ward for</p> <p>5 year-end 2002.</p> <p>6 A. Correct.</p> <p>7 Q. And it tells him what his ending</p> <p>8 balance in his account was on 2002, correct?</p> <p>9 A. Um-hum, correct.</p> <p>10 Q. Now, your spreadsheet generally</p> <p>11 speaks as of the beginning of the year, but the</p> <p>12 number is going to be the same. In other words,</p> <p>13 the value of his account at the end of a particular</p> <p>14 plan year should be exactly the same as the value</p> <p>15 of his account at the beginning of the next plan</p> <p>16 year, is that correct?</p> <p>17 A. My spreadsheet actually provides</p> <p>18 account balances beginning and end of year.</p> <p>19 Q. Okay.</p> <p>20 Look at 2002, if you would, for Mr.</p> <p>21 Ward on KRA 417 of Plaintiffs' 34. The number that</p> <p>22 you have for an account balance at the end of 2002</p> <p>23 is 149,939.40, is that correct?</p> <p>24 A. Yes.</p>

24 (Pages 90 to 93)



ETHAN E. KRA

<p style="text-align: right;">Page 94</p> <p>1 Q. And the number for his year-end 2 ending balance in 2002, as reflected on Exhibit 38, 3 is higher, is that correct? 4 A. Correct. 5 Q. And it's higher because you 6 maintained the static interest rate assumption of 7 5.01 percent, is that correct? 8 A. It's two factors. 9 Q. Okay. 10 A. One is, I assumed constant pay. 11 Q. Okay. 12 A. This spreadsheet does not reflect 13 any pay increases after 1999. 14 Q. And that's reflected in the total 15 compensation line, which is the fourth row down 16 from the subheading "Conectiv Cash Balance 17 Sub-Plan," and it says \$70,385.51 for each year, is 18 that correct? 19 A. Correct. That's one factor. 20 The other factor is holding the 21 interest rate constant at 5.01 percent. 22 Q. Okay. 23 A. In fact, if I'm looking at this 24 statement -- yes, okay.</p>	<p style="text-align: right;">Page 96</p> <p>1 document. 2 Q. That's fine. Let me see if I can 3 get a good page reference for that, or at least a 4 section number. 5 I would take a look, Mr. Kra, at 6 Section 3.53, and I think that would give you -- 7 A. Based on the participants' years of 8 service, as of the effective date, there were 9 transition crediting rates, representing different 10 percentages. In this case, Mr. Ward, who had 17 11 and a fraction years of service as of the effective 12 date of the cash balance plan, fell into the 13 category of 16 to 19 years. 14 Q. Okay. 15 A. According to Page 19 of the plan 16 document, an individual with 16 to 19 years gets a 17 transition crediting rate of 3 percent, which would 18 mean that each year he would get 3 percent of that 19 year's recognized compensation as an additional pay 20 credit in the cash balance account. 21 Q. And, under your analysis, did you 22 assume that that transition credit stayed static? 23 A. Yes. 24 Q. So that, for example, when Mr. Ward</p>
<p style="text-align: right;">Page 95</p> <p>1 Q. In fact, if we turn to the second 2 page of Plaintiffs' 38, we'll see that, in 3 actuality, his compensation for 2002 was higher 4 than the number that you are using in your model, 5 since you kept his compensation static. He 6 actually earned \$80,000 that year. 7 A. Correct. 8 Q. And that would be true across the 9 board. In other words, if we went through this 10 exercise on each one of these Plaintiffs, we would 11 see variations, once we got past 1999, between the 12 amount of the ending balance on their statement and 13 the amount of the ending balance on Plaintiffs' 34, 14 because of the two factors you identified: 15 Maintaining the pay static, and maintaining the 16 interest credit rate static? 17 A. Correct. 18 Q. Now, this plan had provisions in it 19 for transition credits. Do you remember that? 20 A. Yes. 21 Q. And do you remember how the 22 transition credits worked? Do you want to look at 23 the plan? 24 A. If I could look at the plan</p>	<p style="text-align: right;">Page 97</p> <p>1 got out to the 20-year point, he did not get the 2 benefit of the increase in the transition credit 3 for purposes of your analysis? 4 A. He did not, because the plan 5 document does not call for it. The plan document 6 determines transition credits as of the given -- 7 Q. The effective date. 8 A. The effective date, not based on the 9 current date. 10 Q. Okay. 11 A. So, an individual's transition 12 crediting rate is fixed immutably on the date of -- 13 the effective date of the conversion of the plan. 14 Q. But their pay credit rate, which is 15 what I wanted to ask you about, is the one that 16 shifts, is that correct? 17 A. The pay crediting rate, as defined 18 in Section 3.3.2, is a function of the individual's 19 attained age. 20 That increases each year, as the 21 person gets older. 22 Q. And you reflected that in your 23 analysis under employer contribution credit, is 24 that correct?</p>

25 (Pages 94 to 97)



ETHAN E. KRA

<p style="text-align: right;">Page 98</p> <p>1 A. Yes. That can be seen on my 2 spreadsheet in the row titled, "Employer 3 Contribution Credit." In the case of Mr. Ward, in 4 1999, that was 8 percent, in 2000 through 2004 it 5 was 9 percent, in 2005 and subsequent years it was 6 10 percent. That just recognizes that he was 7 getting older as time marches on. 8 Q. As are we all. 9 A. Beats the alternative. 10 Q. That's what President Clinton said 11 when they asked him about his 50th birthday. 12 Now, going back to Mr. Ward on Page 13 417, we've got a row that's still under the heading 14 of "Conectiv Cash Balance Sub-Plan," that says, 15 "Accrued Benefit (BOY)." 16 Do you see that? 17 A. Yes. 18 Q. First of all, can you tell me what 19 "BOY" means? 20 A. Beginning of year. 21 Q. Thought so. 22 And you've got a figure there of 23 \$23,014.11, is that correct? 24 A. Yes.</p>	<p style="text-align: right;">Page 100</p> <p>1 A. The calculation of the opening 2 account balance provided an amount greater than the 3 mere conversion of the accrued benefit payable at 4 age 65 into a lump sum. 5 Q. And that was because of subsidized 6 benefits under the prior plan? 7 A. That was because of how they decided 8 to determine opening account balances. That is a 9 design issue that the company, based on whoever 10 they had advising them at the time, decided was 11 what they wanted to provide as the benefit level. 12 Q. Now, if we turn to 418 and 419 of 13 Plaintiffs' 34, we've got a different looking kind 14 of spreadsheet for Mr. Ward. It's headed at the 15 top, "Name, Maurice Ward, Beginning of Year 16 Factors," and then it sets valuation dates. 17 A. Um-hum. 18 Q. Why don't you walk me through this 19 and explain to me, as best you can, what this -- 20 what 418 and 419 of Plaintiffs' 34 represent. 21 A. This is for Mr. Ward. The numbers 22 going down in the left-most column represent 23 assuming benefit -- based on benefits accrued 24 through a given date. Valuation year is, if we</p>
<p style="text-align: right;">Page 99</p> <p>1 Q. Now, this 23,000 and change figure 2 represents what? 3 A. That represents the cash balance 4 account, as of January 1, 1999, converted to an 5 annuity payable at age 65, determined under the 6 factors in the plan document. 7 Q. And then, further down in the same 8 row, for 1999, for Mr. Ward, on 417 of Plaintiffs' 9 34, you've got an annual benefit payable at age 65 10 of -- I'm going to say it's 17,433.84, but I could 11 be reading it wrong. 12 A. That's right. 13 Q. And how was that calculated? 14 A. That's the prior plan benefit. 15 Q. Okay. 16 A. Had the plan not been amended to 17 cash balance, and had Mr. Ward continued under the 18 old plan, his accrued benefit, payable at age 65, 19 under the old plan, using his final average pay as 20 of that date, and the formulas in the old plan 21 would have generated a life annuity of \$17,433.80. 22 Q. So, why is it higher under the new 23 plan, as of January 1, 1999, than under the old 24 plan?</p>	<p style="text-align: right;">Page 101</p> <p>1 look at the plan in 1999, old plan, if he only 2 worked through January 1, 1999, his benefit would 3 have been 17,433.84. 4 Q. And the benefit figure that's there 5 for the 17,433.84 is the normal retirement benefit 6 that he had earned as of that date under the terms 7 of the old plan? 8 A. Correct. 9 Q. Okay. 10 Next column over would be -- 11 A. Well, do you want me to just run 12 down the columns. 13 Q. Okay, sure. 14 A. 1-1-2000, the number below that 15 represents the same item, assuming he worked one 16 more year, but based on all the factors from 1999. 17 Q. Okay. 18 A. Holding them constant. 19 The next number, assuming he worked 20 until 1-1-2001 -- 21 Q. And so forth -- 22 A. -- again, holding -- so forth and so 23 on. 24 The new plan represents the cash</p>

26 (Pages 98 to 101)

ETHAN E. KRA

<p style="text-align: right;">Page 102</p> <p>1 balance plan. If we -- as of January 1, 1999, if  2 we took the opening account balance, convert it to  3 an annuity payable at age 65, it's \$23,014.11.  4 Q. And then it just --  5 A. The next one is, if he works one  6 more year, gets one more year's worth of pay  7 credits, what would that annuity payable at age 65  8 be, based on the fact that he has an additional  9 year's worth of pay credits.  10 The interest credits on the  11 23,014.11, or the amount that went into developing  12 the 23,014.11, are already embedded there, because  13 interest credits on prior account balances are  14 attributable to the past service. You don't have  15 to work another year to get your interest credits.  16 They just are there because your money is there --  17 or, not your money, but your account balance is  18 sitting there.  19 Q. Technically, there is not a physical  20 account in this plan design?  21 A. Right, correct. There is a notional  22 account, and that notional account growth is  23 credited with interest, and that interest credit on  24 the notional account is on account of having worked</p>	<p style="text-align: right;">Page 104</p> <p>1 So, I look at the interest rates in  2 2000, I look at the pay levels in 2000, so now I  3 have more information on salary, I have more  4 information on interest rates.  5 Q. Let's stop and break that down right  6 there. If we compare, for Mr. Ward, on KRA 418,  7 his 1-1-2000 accrued benefit, under the terms of  8 the old plan, they are identical in both the  9 valuation year 1999 and 2000, but then, when you go  10 to 2001, they change.  11 Is that change in 2001 reflective of  12 the fact that you have different salary data?  13 A. I have some additional salary  14 information for 2000. New salary information.  15 Q. Let me direct your attention to  16 valuation year 1999. The accrued benefit, under  17 the term of the new plan, of 2000 -- for -- as of  18 1-1-2000, is less than the same amount for  19 valuation year 2000.  20 Do you see that?  21 A. Yes.  22 Q. And that is reflective of changes in  23 the interest rates?  24 A. That would reflect -- that probably</p>
<p style="text-align: right;">Page 103</p> <p>1 in prior years. That interest is not predicated on  2 your working during the current year.  3 Q. And, in fact, if it was, the IRS --  4 do they take a position on what would happen?  5 A. If the interest were conditioned on  6 working during that year, then that interest would  7 be deemed part of that year's accrual, and it would  8 make it very difficult for the plan to pass some of  9 the IRS qualification tests.  10 As a result -- I won't say as a  11 result, but virtually every plan that I've ever  12 seen will provide the interest credit on the  13 account balance, independent of whether the  14 individual is working or not.  15 Q. Okay.  16 A. I'm not saying there aren't plans  17 that don't do that, but I'm not dealing with them.  18 Q. They are somebody else's headache.  19 A. Yes.  20 Q. Now, let's move over to valuation  21 year 2000.  22 A. Valuation year 2000 represents doing  23 the same exercise, but starting at January 1, 2000,  24 with all the facts known at January 1, 2000.</p>	<p style="text-align: right;">Page 105</p> <p>1 is very significantly affected by interest rate  2 changes. There would also be some new salary  3 information, but the bulk of that would be change  4 in interest rates.  5 Q. And then the tables just continue in  6 that same pattern for subsequent valuation years,  7 is that correct?  8 A. Correct.  9 Q. So that, when I go out to valuation  10 year 2002 -- obviously, we start with 1-1-2002,  11 because he can't retire in the past --  12 A. Um-hum.  13 Q. -- and you are simply calculating  14 his benefits based on updated information and doing  15 a side-by-side comparison, is that correct?  16 A. Um-hum.  17 Q. When I get over on 419, under old  18 plan, in or about 2011 you've got a shaded box in  19 valuation year 2006.  20 A. Um-hum.  21 Q. What does that represent?  22 A. Represents years in which old plan  23 is greater than new plan.  24 Q. Comparing accrued benefit at age 65</p>

27 (Pages 102 to 105)

ETHAN E. KRA

<p style="text-align: right;">Page 106</p> <p>1 to accrued benefit at age 65, is that correct?</p> <p>2 A. Correct.</p> <p>3 Q. Now, we could go through the same</p> <p>4 exercise with the other three Plaintiffs. The</p> <p>5 explanation would be the same?</p> <p>6 A. Same story.</p> <p>7 The difference is, there were some</p> <p>8 differences in the prior plan between the different</p> <p>9 Plaintiffs, and we reflected the differences in the</p> <p>10 prior plans in determining the old plan.</p> <p>11 Q. So that, if one had a different</p> <p>12 definition of compensation than the other, you used</p> <p>13 the one that was in the heritage plan for the</p> <p>14 particular plan?</p> <p>15 A. For that particular Plaintiff. And,</p> <p>16 if there was a difference in the formula, we would</p> <p>17 reflect the difference in the formula.</p> <p>18 Q. We had touched a little bit on the</p> <p>19 idea of what would happen if you conditioned the</p> <p>20 future interest credits under a cash balance plan</p> <p>21 on future service, and I think you had indicated --</p> <p>22 I don't want to put words in your mouth. I'm just</p> <p>23 trying to supply some context for the question --</p> <p>24 that the IRS has taken a position that would make</p>	<p style="text-align: right;">Page 108</p> <p>1 and was part of the accrued benefit as opposed to</p> <p>2 part of -- condition -- as opposed to being</p> <p>3 conditioned -- I don't want to use the exact term</p> <p>4 "accrued benefit," but, if the interest crediting</p> <p>5 was not conditioned on continued employment, then,</p> <p>6 as far as certain issues of whip-saw, which was a</p> <p>7 term used in the literature, the plan would not be</p> <p>8 in violation, and I think that related to Internal</p> <p>9 Revenue Code Section 417E.</p> <p>10 Q. 417E sets what's known as the</p> <p>11 applicable interest rate?</p> <p>12 A. Yes.</p> <p>13 Q. And the applicable interest rate in</p> <p>14 the current regime is the 30-year Treasury, is that</p> <p>15 correct?</p> <p>16 A. Not -- 30-year -- just a second.</p> <p>17 Through the end of 2007, it's was the 30-year</p> <p>18 Treasury. After 2007, it will be based on</p> <p>19 corporate yield curve and there will be a</p> <p>20 transition period where the interest rate changes</p> <p>21 from one to the other over a period of years.</p> <p>22 Q. You used the phrase "whip-saw," and</p> <p>23 we probably ought to talk, at least very briefly,</p> <p>24 about what happens with whip-saw.</p>
<p style="text-align: right;">Page 107</p> <p>1 it difficult for the plan to -- a plan configured</p> <p>2 in that fashion to pass some of the required tests.</p> <p>3 Is there a particular IRS</p> <p>4 pronouncement that that --</p> <p>5 A. I believe there was an IRS</p> <p>6 pronouncement -- I can't site which one -- which</p> <p>7 addressed the issue of whether the interest credits</p> <p>8 were predicated on continued employment versus part</p> <p>9 of the entitlement on account of past employment.</p> <p>10 I do not recall which IRS</p> <p>11 pronouncement it was and the exact wording</p> <p>12 contained therein.</p> <p>13 Q. Does the phrase "Notice 96-8" ring a</p> <p>14 bell with you?</p> <p>15 A. Yes.</p> <p>16 Q. And do you have a recollection of</p> <p>17 Notice 96-8?</p> <p>18 A. 96-8, if I recall correctly, dealt</p> <p>19 with interest crediting rates that the IRS would</p> <p>20 view as -- I don't know what the right term is --</p> <p>21 reasonable, acceptable, or somehow blessed, if they</p> <p>22 were in a cash balance plan. That, if the interest</p> <p>23 crediting rate followed one of those regimes or</p> <p>24 produced -- or was a lower interest crediting rate,</p>	<p style="text-align: right;">Page 109</p> <p>1 A. Under 417E, there is a minimum</p> <p>2 amount that must be paid as a lump sum, if a plan</p> <p>3 is to be qualified, if the plan offers a lump sum.</p> <p>4 There is no requirement that a plan offer a lump</p> <p>5 sum, but, if you do pay a lump sum out of a</p> <p>6 qualified pension plan, there is a minimum amount,</p> <p>7 which is based on the present value of the normal</p> <p>8 retirement benefit payable at the normal retirement</p> <p>9 age, determined using the applicable interest rate</p> <p>10 and the applicable mortality table.</p> <p>11 The IRS notice that you referred to</p> <p>12 said that, if the interest crediting rate on a cash</p> <p>13 balance plan does not exceed one of the safe</p> <p>14 harbors contained in that notice, then the plan</p> <p>15 would be deemed to satisfy that requirement.</p> <p>16 I don't have the exact wording of</p> <p>17 exactly what --</p> <p>18 Q. I'm not trying to -- I'm dealing</p> <p>19 with a very broad brush here.</p> <p>20 A. I'm not going to say exactly what it</p> <p>21 gave -- which comfort zone it gave, but that was</p> <p>22 the general gist.</p> <p>23 Q. Let me see if I can put some</p> <p>24 parameters on what constitutes whip-saw, and then</p>

28 (Pages 106 to 109)

ETHAN E. KRA

Page 110

Page 112

1 you'll correct me, if -- or probably more likely  
2 when -- I get it wrong.

3 Were there situations that existed  
4 where cash balance plans had an interest crediting  
5 rate that was not tied to one of the relevant rates  
6 that the IRS permitted you to discount an annuity  
7 to present value for purposes of a lump sum  
8 calculation?

9 A. Yes.

10 Q. And, in those circumstances, was it  
11 conceivable that the present value of the accrued  
12 benefit expressed as an annuity under such a cash  
13 balance plan would be different than the notional  
14 account?

15 A. Yes.

16 Q. And that's what whip-saw is?

17 A. Whip-saw would be if the present  
18 value of the annuity payable at the normal  
19 retirement date exceeded the notional -- the dollar  
20 amount of the notional account.

21 Example. If a cash balance plan  
22 guaranteed an 8 percent interest crediting rate,  
23 and 30-year Treasuries were at 6 percent, then you  
24 would project the notional account at 8 percent to

1 Do you recall there coming a time  
2 when the General Accounting Office came out with a  
3 report that suggested that a lot of participants  
4 were getting shortchanged in their lump sum  
5 calculations for cash balance accounts?

6 A. I remember there was a GAO report.  
7 I don't recall the details right now. That was  
8 about -- as you indicated, about five years ago.

9 I've read quite a few GAO reports in  
10 the past five years.

11 (Exhibit P-39 is marked for  
12 identification.)

13 BY MR. MALONE:

14 Q. The court reporter has handed you  
15 what we've marked as Plaintiffs' Exhibit 39 for  
16 identification purposes. It's a reprint of an  
17 article from Business Insurance, May 13, 2002.

18 Why don't you take a moment or two  
19 to review it, and then I'll ask you a question or  
20 two about it.

21 A. Um-hum.

22 Q. Does this refresh your recollection  
23 as to the GAO report on whip-saw?

24 A. Somewhat. I think I really would

Page 111

Page 113

1 normal retirement date, again for -- to an annuity,  
2 and discount at 6 percent. If you project at 8 and  
3 discount at 6, you usually end up with a larger  
4 number.

5 Q. A happy participant, but an unhappy  
6 employer.

7 Have you ever expressed an opinion  
8 on whether Notice 96-8 is sound?

9 A. I don't recall.

10 Q. Are you familiar with a publication  
11 known as "Business Insurance"?

12 A. Yes.

13 Q. Have you ever spoken to  
14 representatives at Business Insurance --

15 A. Yes.

16 Q. -- on matters relating to pensions?

17 A. Yes.

18 Q. Do you recall speaking to someone at  
19 Business Insurance in or about May of 2002?

20 A. I've spoken to more reporters over  
21 the years than I care to remember.

22 I don't recall dates for specific  
23 conversations.

24 Q. I don't blame you.

1 like to look at the GAO report before I express  
2 another opinion on it.

3 Q. On Page 2 it attributes to you a  
4 comment that the GAO report was not a product of an  
5 unbiased evaluator.

6 Do you see that?

7 A. Yes.

8 Q. Did you actually say that, do you  
9 know?

10 A. I believe I did, but I don't  
11 remember.

12 Q. Any reason to doubt that it's an  
13 accurate quote of you?

14 A. No.

15 Q. Do you remember anything that led  
16 you to conclude that the GAO report was something  
17 other than work done by an unbiased evaluator?

18 A. I'd have to look at the report again  
19 to refresh my memory.

20 Q. Okay.

21 Further on it attributes the comment  
22 that the Inspector General is relying on something  
23 that hasn't even gotten to the level of proposed  
24 regulation.

29 (Pages 110 to 113)

ETHAN E. KRA

Page 114	Page 116
<p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. And they are citing it as the</p> <p>4 gospel, close quote.</p> <p>5 A. Um-hum.</p> <p>6 Q. Is that something you said?</p> <p>7 A. I don't recall.</p> <p>8 I may have.</p> <p>9 Q. Is that a reference to Notice 96-8?</p> <p>10 A. I believe so.</p> <p>11 MR. MALONE: That's all I have for</p> <p>12 you on Exhibit 39.</p> <p>13 (Exhibit P-40 is marked for</p> <p>14 identification.)</p> <p>15 BY MR. MALONE:</p> <p>16 Q. Mr. Kra, the court reporter has</p> <p>17 handed you a document we've marked Plaintiffs'</p> <p>18 Exhibit 40 for identification purposes. It's a</p> <p>19 single sheet of paper that was produced from your</p> <p>20 file. It looks like one of those little pads you</p> <p>21 pick up at your hotels, in this instance the</p> <p>22 Marriott Wardman Park Hotel.</p> <p>23 A. Yes.</p> <p>24 Q. Is this your handwriting?</p>	<p>1 THE WITNESS: I'm just saying Pepco,</p> <p>2 I think, was -- that looks like my secretary's</p> <p>3 writing on Pepco.</p> <p>4 Q. Oh, okay. That's your secretary?</p> <p>5 A. I think so. I'm not sure.</p> <p>6 Q. So she knew what file to stick it</p> <p>7 in?</p> <p>8 A. Yes.</p> <p>9 Q. "Accrual" you've got?</p> <p>10 A. Yes.</p> <p>11 Q. And then you've got an equal sign?</p> <p>12 A. Yes.</p> <p>13 Q. And then you've got what you called</p> <p>14 chicken scratch. I wouldn't have called it that,</p> <p>15 but since -- can you interpret what the -- there is</p> <p>16 like a formula there.</p> <p>17 A. Accrued benefit, accrued EOY, end of</p> <p>18 year, minus accrued EOY, end of year, without,</p> <p>19 this -- TY, this year's, service and pay.</p> <p>20 Q. Okay.</p> <p>21 A. So I defined the accrual for a given</p> <p>22 year as the increase in the accrued benefit at the</p> <p>23 end of the year solely attributable to this year's</p> <p>24 service and pay.</p>
Page 115	Page 117
<p>1 A. Yes.</p> <p>2 Q. Just could you satisfy my curiosity</p> <p>3 as to where the Marriott Wardman Park Hotel is?</p> <p>4 A. Washington, D.C.</p> <p>5 Q. What do these notes reflect?</p> <p>6 A. These were chicken scratch notes I</p> <p>7 took and analyses I did as I read through the plan</p> <p>8 document the first time.</p> <p>9 Q. Were you sitting in the hotel in</p> <p>10 Washington?</p> <p>11 A. Yes.</p> <p>12 Q. I ask because I abscond with these</p> <p>13 pads all the time and people get notes from me in</p> <p>14 the office on all these different ones.</p> <p>15 A. I was giving a speech there.</p> <p>16 Q. Walk me through them, if you can.</p> <p>17 I mean, "Pepco" is obvious, in the</p> <p>18 upper right-hand corner. That's your client -- or,</p> <p>19 in this instance, it's the defendant in the case in</p> <p>20 which you are being asked to consider rendering</p> <p>21 opinions.</p> <p>22 A. Yes.</p> <p>23 MR. BASSMAN: Objection. You can</p> <p>24 answer.</p>	<p>1 Q. Now, the next line down, "What about</p> <p>2 PS/TS?"</p> <p>3 A. I was considering whether or not --</p> <p>4 if I had to do any analysis on the fractional rule.</p> <p>5 Q. And PS and TS -- PS is?</p> <p>6 A. Past service.</p> <p>7 Q. And TS is total service?</p> <p>8 A. Total service.</p> <p>9 Q. This is probably a good time -- we</p> <p>10 talked about numerators and denominators before,</p> <p>11 but lawyers aren't real good on that. The</p> <p>12 numerator is the top of the fraction?</p> <p>13 A. Yes.</p> <p>14 Q. And the denominator is the bottom?</p> <p>15 A. Yes.</p> <p>16 Q. The next down?</p> <p>17 A. "Old revenue ruling on Delta</p> <p>18 factors." I don't recall what that was about.</p> <p>19 Q. Delta is a --</p> <p>20 A. Change.</p> <p>21 Q. Okay. Thank you.</p> <p>22 And then you got 5 percent, 6</p> <p>23 percent, 7 percent, 8 percent, and a line.</p> <p>24 A. Right. That was the -- Page 17 of</p>

30 (Pages 114 to 117)



ETHAN E. KRA

<p style="text-align: right;">Page 118</p> <p>1 the plan document has the pay crediting rates, and  2 I copied that information from the plan document on  3 to this note pad.  4 Q. Okay.  5 A. That's where you have less than 30,  6 30 to 34, 35 to 39, 40 to 44, 45 to 49, 50 plus,  7 where the plan document says 50 and over.  8 Q. Well, you did it in two places,  9 though. You have it in a line going across and  10 then you did it in columns.  11 A. Right.  12 Q. Is there any significance to that?  13 A. Yes. Because what I'm doing is, I  14 was looking at the four-thirds rule.  15 Q. Okay.  16 A. What I was looking at is -- down the  17 column I put the pay crediting rates, and I put the  18 same pay crediting rates across the top, and then I  19 looked at the relationships of those pay crediting  20 rates.  21 If the pay crediting rate in a  22 future year is no more than four-thirds of an  23 earlier year, there is nothing to analyze. If the  24 pay crediting rate is more than four-thirds of an</p>	<p style="text-align: right;">Page 120</p> <p>1 A. This is applying the IRS methodology  2 of how the analysis is done, which is based on  3 static pay and assuming interest rates remain  4 constant.  5 Q. Is that IRS methodology reflected in  6 any particular document?  7 A. I would have to look at the  8 regulations under Code Section 411 to determine  9 exactly what words they used about holding factors  10 constant. There is terminology there. I'd have to  11 look for the exact words.  12 Q. Now, further on you've got -- below  13 that table --  14 A. Um-hum.  15 Q. Let me go back to the -- at the 35  16 to 39 line you've got 7 percent, and then you've  17 got 0.981, is that?  18 A. 0.98 percent.  19 Q. Okay.  20 And what does that 0.98 percent  21 reflect?  22 A. If I take four-thirds of five, that  23 would give me 20 thirds, which is six and  24 two-thirds percent.</p>
<p style="text-align: right;">Page 119</p> <p>1 earlier year, then the question is, how can the  2 plan pass the four-thirds rule? The way the plan  3 passes the four-thirds rule is by having interest  4 credits from the earlier year to the later year.  5 So, if I give a 5 percent pay  6 credit, and then if I give 4 percent interest  7 credits for ten years, ignoring compound interest,  8 I've given 40 percent, so 40 percent on 5 percent  9 gives you 7 percent. So then I would compare that  10 7 percent times four-thirds with the interest --  11 with the pay crediting rate in the subsequent year.  12 Q. Okay.  13 A. So, what I was determining here was  14 what is the minimum interest crediting rate  15 necessary so that the plan would pass back-loading  16 under the 133 and a third percent rule. So, what I  17 determined was, as long as the plan's interest  18 crediting rate for a given year is always at least  19 1.95 percent, the plan will, by definition, by  20 form, pass the four-thirds rule.  21 Q. And that's applying the same types  22 of parameters you applied -- as are set forth in  23 Plaintiffs' 34, where you are keeping pay static  24 and you are keeping --</p>	<p style="text-align: right;">Page 121</p> <p>1 Q. Right.  2 A. 7 percent --  3 Q. Is more.  4 A. -- is more than six and two-thirds  5 percent.  6 Q. So that --  7 A. Therefore, if I had no interest  8 credit, I would fail the four-thirds rule.  9 I determined that, as long as the  10 plan credited at least 0.98 percent interest each  11 year, that the year -- the last year I can get a 5  12 percent credit is age 29.  13 Q. Right.  14 A. The first year I can get a 7 percent  15 credit is age 35. That's six years later.  16 So, if I get 0.98 percent for six  17 years on the 5 percent credit, and then multiple it  18 by four-thirds, I'm bigger than 7. Therefore, I  19 would pass.  20 Q. As I go down to 40 to 44, I guess it  21 is, the 1.671 just reflects the same calculation  22 for the 8 percent rate?  23 A. It's -- 1.167 percent --  24 Q. Okay.</p>

31 (Pages 118 to 121)



ETHAN E. KRA

<p style="text-align: right;">Page 122</p> <p>1 A. -- is the minimum interest crediting  2 rate that I would need, so that a 5 percent credit  3 at age 29 would pass the four-thirds test, against  4 an 8 percent credit at age 40. Among those two  5 interest rates, those are the worst possible  6 combination of years.  7 What I'm doing is a worst case  8 scenario analysis.  9 Q. Right. And the same thing just  10 continues down in the same line?  11 A. Yes.  12 Q. Now, breaking away from that box in  13 the middle, we've got 3.4.2 interest credit until  14 NRD.  15 A. That's a reference to the plan  16 document, and what I was doing is confirming that  17 the interest credits under the plan continue to a  18 participant who leaves employment, but does not  19 take a lump sum until normal retirement date.  20 So, if an individual has a cash  21 balance in the notional account and leaves  22 employment at, let's say, for argument's sake, age  23 42, and does not take a lump sum immediately, but  24 leaves the balance in the plan, that individual</p>	<p style="text-align: right;">Page 124</p> <p>1 A. Plan document. And I looked at  2 1.565. Those are three different pieces of the  3 plan document, and I looked at the three of them in  4 conjunction with each other in drawing my  5 conclusion, and then I wrote the word -- letters  6 "OK," meaning I don't have a problem.  7 Q. Okay.  8 And then you have the distinguished  9 gentleman sitting next to you -- his phone number  10 there?  11 A. Correct.  12 Q. Did you and he chat while you were  13 doing this?  14 A. No.  15 Q. Is his phone number there for any  16 particular reason?  17 A. I had a phone call after I did this.  18 Q. And the pad was handy.  19 A. The same pad, and it was probably  20 the first time I had spoken with him, so I needed  21 his phone number.  22 Q. Fair enough.  23 A. Or, if it wasn't the first time, it  24 was, I needed the phone number to call him. I</p>
<p style="text-align: right;">Page 123</p> <p>1 will get whatever interest credits the plan credits  2 each year thereafter through age 65, even though  3 that individual is not working.  4 I wanted to make sure that the plan  5 had that language in it.  6 Q. Otherwise, it would change the  7 analysis you had done above, correct?  8 A. Correct.  9 So my concern is, does the plan do  10 what most plans that I look at do? I don't make  11 the assumption that it does it, until I find the  12 section in the plan document that so provides.  13 Q. Now, underneath the line "3.4.2  14 interest credits under NRD," you've got what?  15 A. "For VTs." For vested terms.  16 Q. That would refer to a participant  17 who has met the vesting schedule on the plan and  18 then leaves?  19 A. Correct.  20 Q. Next line, "5.2 comma."  21 A. "5.2 comma CF," confrere or cite,  22 "1.56." So, what I did was I looked at 3.4.2,  23 5.2 --  24 Q. Is that a reference to the plan?</p>	<p style="text-align: right;">Page 125</p> <p>1 don't remember.  2 (Recess called at 11:47 a.m.)  3 (Exhibit P-41 is marked for  4 identification.)  5 BY MR. MALONE:  6 Q. The court reporter has handed you a  7 document we've marked Plaintiffs' 41 for  8 identification purposes.  9 A. Um-hum.  10 Q. Why don't you take a moment to  11 review that, and I'll ask you one or two questions  12 on it, and then we'll break so you can eat your  13 lunch. I wouldn't want to say I withheld food from  14 a witness to get a better answer.  15 A. Okay.  16 Q. Can you tell me what 41 is?  17 A. I believe this is the engagement  18 letter with respect to the services we are  19 providing in this matter.  20 Q. And you signed on behalf of Mercer?  21 A. Yes.  22 Q. And do you recall approximately how  23 long after you were first contacted about this case  24 that you signed the retainer letter?</p>

32 (Pages 122 to 125)

ETHAN E. KRA

<p style="text-align: right;">Page 126</p> <p>1 A. Couple months.</p> <p>2 Q. Is that common?</p> <p>3 A. It was a matter of having the</p> <p>4 lawyers between Mercer and the law firms</p> <p>5 representing the defendant work out the exact</p> <p>6 language in the engagement letter.</p> <p>7 I generally don't get involved in a</p> <p>8 lot of the -- that material. That's not my</p> <p>9 expertise.</p> <p>10 MR. MALONE: Okay. Why don't we</p> <p>11 break now, since your lunch is here.</p> <p>12 (Recess called at 12:04 p.m.)</p> <p>13 (Resumed at 12:52 p.m.)</p> <p>14 BY MR. MALONE:</p> <p>15 Q. Can you fish 35 out of the pile for</p> <p>16 me? That would be your report.</p> <p>17 Can you tell who drafted 35?</p> <p>18 A. I did.</p> <p>19 Q. You did?</p> <p>20 A. Yes.</p> <p>21 Q. And did you have assistance from</p> <p>22 anyone?</p> <p>23 A. The numbers came off the</p> <p>24 spreadsheet.</p>	<p style="text-align: right;">Page 128</p> <p>1 Q. What he understood?</p> <p>2 A. What he understood and did. To make</p> <p>3 sure that what I wrote and what he understood the</p> <p>4 program did --</p> <p>5 Q. Correlated?</p> <p>6 A. -- correlated, and he would have</p> <p>7 been the peer review of the document.</p> <p>8 Q. Just as you were the peer review of</p> <p>9 the underlying work product?</p> <p>10 A. Right.</p> <p>11 Q. Is that common in the firm, for two</p> <p>12 actuaries to work together and sort of cross-peer</p> <p>13 review each other on the same assignment?</p> <p>14 A. It depends on the magnitude of the</p> <p>15 assignment, but there are -- I wanted a very high</p> <p>16 quality actuary working with me on this, and Bruce</p> <p>17 is one of the top guys I've got in the firm.</p> <p>18 Q. Okay.</p> <p>19 A. He is exceedingly well respected in</p> <p>20 the industry, and I don't tolerate anything other</p> <p>21 than the best working for me.</p> <p>22 Q. Let me take you to KRA 23 of</p> <p>23 Plaintiffs' 35.</p> <p>24 A. Um-hum. Okay.</p>
<p style="text-align: right;">Page 127</p> <p>1 Q. So that entails the --</p> <p>2 A. The work of Bruce Cadenhead and the</p> <p>3 people that assisted him.</p> <p>4 My administrative assistant may have</p> <p>5 pulled an old expert report to format it, and she</p> <p>6 helped me in that respect.</p> <p>7 She used to be a legal secretary</p> <p>8 before I hired her.</p> <p>9 Q. Smart woman.</p> <p>10 A. Thank you.</p> <p>11 Q. She got out of the --</p> <p>12 A. She got out just before her boss was</p> <p>13 disbarred.</p> <p>14 Q. Excellent.</p> <p>15 A. And I had assistance, again, from</p> <p>16 Bruce in getting the thing together -- and Michele,</p> <p>17 in putting together the list of documents.</p> <p>18 Q. Okay.</p> <p>19 A. The data summary would have been put</p> <p>20 together by Bruce and Stephane, which I would have</p> <p>21 then reviewed against the original material.</p> <p>22 Q. Okay.</p> <p>23 A. And Bruce would have reviewed what I</p> <p>24 wrote, to make sure that it matched what he did.</p>	<p style="text-align: right;">Page 129</p> <p>1 Q. This is your CV?</p> <p>2 A. Yes.</p> <p>3 Q. And you reviewed it and it's</p> <p>4 reasonably accurate?</p> <p>5 A. I have one tiny correction.</p> <p>6 Q. Okay.</p> <p>7 A. KRA 00024, under "ERISA Industry</p> <p>8 Committee," the Pension Funding Task Force, 2004 to</p> <p>9 2006. It disbanded after the enactment of the</p> <p>10 Pension Protection Act.</p> <p>11 Q. What was your roll in connection</p> <p>12 with the Pension Protection Act and ERISA Industry</p> <p>13 Committee?</p> <p>14 A. Well, independent of the ERISA</p> <p>15 Industry Committee, our firm put together a</p> <p>16 proposal for pension funding reform that we floated</p> <p>17 in Washington before the administration came out</p> <p>18 with their proposal.</p> <p>19 We met with various plan sponsors,</p> <p>20 the ERISA Industry Committee, the American Benefits</p> <p>21 Council, and we went to the Pension Benefit</p> <p>22 Guaranty Corporation. We met with staffers on the</p> <p>23 Hill, the Department of Labor, Department of</p> <p>24 Treasury, Joint Tax, and I probably had over 30</p>

33 (Pages 126 to 129)

ETHAN E. KRA

<p style="text-align: right;">Page 130</p> <p>1 meetings in Washington, as well as going around the  2 country meeting with plan sponsors trying to get  3 support.  4 Many aspects of that proposal were,  5 in fact, incorporated in one of the Bills. The  6 Senate Finance Committee Bill was very  7 substantially drawn from the Mercer proposal that I  8 helped pull together. Conference committee, some  9 of it -- it changed, but there are certain areas of  10 that Bill where I see my footprints very strongly.  11 Q. For the uninitiated, what is the  12 ERISA Industry Committee?  13 A. The ERISA Industry Committee is a  14 trade association representing plan sponsors and  15 consulting firms. I'm not sure who else may be  16 paying dues. They are a lobbying group, and they  17 deal with benefits issues in the Washington sea.  18 Q. They are advocates for sponsors?  19 A. They represent plan sponsors.  20 Q. In litigation as well as NAQ?  21 A. I believe they filed amicus briefs  22 in some situations where they felt it was a very  23 significant issue for the benefits community.  24 Q. I think we've covered a lot of</p>	<p style="text-align: right;">Page 132</p> <p>1 A. What I looked at was, as of  2 conversion date, did the projected benefit at  3 normal retirement date go up or down as a result of  4 the conversion.  5 Q. Now, none of the plaintiffs were at  6 age 65 as of that date, were they?  7 A. No.  8 Q. And, once you concluded that it went  9 up by reason of conversion, that stopped your  10 analysis?  11 A. I concluded that went up, I reported  12 that.  13 (Exhibit P-42 is marked for  14 identification.)  15 BY MR. MALONE:  16 Q. The court reporter has handed you a  17 document marked Plaintiffs' 42 for purposes of  18 identification. Appears to be an E-Mail printed  19 out from your system --  20 A. Um-hum.  21 Q. -- and commences on KRA 391.  22 Would you take a moment or two to  23 review it and then I'll ask you a few questions  24 about it.</p>
<p style="text-align: right;">Page 131</p> <p>1 what's covered in your report already as part of  2 your testimony, but, let me ask you this. Were you  3 ever asked to calculate the rate of future benefit  4 accrual under the heritage plans and to contrast  5 that with the cash balance sub-plan, as part of  6 your work?  7 A. I'm not sure I understand the  8 question.  9 Q. Are you familiar with a provision of  10 ERISA, which, in statutory terms, is 204H, that  11 imposes a notice requirement for plan sponsors?  12 A. Yes.  13 Q. And what's your understanding of  14 what 204H required, bearing in mind that this  15 conversion occurred effective as of 1-1-99?  16 A. If there would be a -- I'm not sure  17 if the word is significant or substantial, or if  18 there was a non-immaterial -- and I'm not sure of  19 the exact demarcation. I'd have to look at the  20 exact wording in the statute -- reduction in  21 benefits at normal retirement, that a notice would  22 have to be given to participants.  23 Q. Is that something that you examined  24 as part of your work here?</p>	<p style="text-align: right;">Page 133</p> <p>1 A. Um-hum.  2 Q. Can you tell me what this is, first  3 of all?  4 A. This represents an E-Mail -- well,  5 it's two E-Mails. One from Gary Jerome to Susan  6 Hoffman, asking who the client is for --  7 Q. Purposes of the retention letter?  8 A. -- who the client is and who to send  9 bills to. The second is an E-Mail from me to Susan  10 Hoffman, copying Gary Jerome and John Welch,  11 summarizing a telephone call with Susan, when she  12 contacted me about potentially being the expert  13 witness, in which I summarized the conversation and  14 outlined what I understood the issues to be and  15 then identified that I would be comfortable with  16 the approaches, subject to making sure that the  17 facts matched the assertions made, because I have  18 to make sure that the facts are correct before I  19 can draw my conclusions.  20 Q. Let's start with -- we had spoken  21 earlier about approximately when you first got  22 involved with this engagement --  23 A. Yes.  24 Q. -- and you weren't quite sure.</p>

34 (Pages 130 to 133)

ETHAN E. KRA

<p style="text-align: right;">Page 134</p> <p>1 Does the date of the E-Mail from Mr.  2 Jerome refresh your recollection at all?  3 A. Yes. It appears that my E-Mail was  4 sent to Susan Hoffman on Monday, March 5th,  5 referring to a telephone call the prior Friday,  6 which would have been March 2nd, so my presumption  7 is that that may have been the first call --  8 Q. At least that you participated in?  9 A. -- that I participated in or the  10 first substantive call.  11 Q. So that, perhaps sometime in late  12 February, your firm was contacted, but this is  13 reasonably proximal with the commencement of  14 substantive work?  15 A. Correct.  16 Q. What I would like you to tell me is,  17 when you say you are comfortable with the  18 approaches that we discussed for the three claims,  19 what you can recall discussing.  20 A. Well, the issue of whether changes  21 in external interest rates from one year to the  22 next, as it affects the benefits -- whether that is  23 factored into the back-loading determination or is  24 it excluded, and my understanding is, in the</p>	<p style="text-align: right;">Page 136</p> <p>1 benefits on account of increasing age, the change  2 in interest rates, as they worked through the  3 plan -- as described to me, would not be a  4 violation of that ERISA requirement.  5 Q. As you understand it?  6 A. As I understand it.  7 Q. How about 204H?  8 A. 204H, the issue is whether the  9 notice was properly provided and whether or not the  10 notice was required, and --  11 Q. Let's break that down. Did any of  12 your work speak to whether the notice was properly  13 provided?  14 A. I did not analyze the legal  15 requirements and the actual sequence of events with  16 respect to notices.  17 Q. So you focused solely on whether it  18 was required?  19 A. Yes.  20 Q. Okay.  21 A. And my analysis was not as to the  22 legal issue of whether or not it was required; but  23 my analysis was solely on the issue of, were  24 benefits increased or decreased? I leave to the</p>
<p style="text-align: right;">Page 135</p> <p>1 analysis of back-loading, you hold factors constant  2 and use a prospective and not a retrospective  3 analysis and, therefore, the change in interest  4 rates would not affect back-loading.  5 This was before I did the analysis  6 that was on that handwritten Marriott notepad, so  7 that I could not confirm that there was no  8 back-loading based on that phone conversation, but  9 that this issue of change in interest rates would  10 not create, in and of itself, a back-loading issue.  11 Q. In your view?  12 A. In my understanding of the way  13 back-loading is calculated and determined.  14 Q. Okay.  15 A. It would also go to the issue of  16 reduction of benefit on account of increasing age.  17 That changes in interest rates external, out of the  18 control of the plan sponsor, to the effect that --  19 to the extent that they affect the benefit, that  20 would not constitute a prohibited reduction of  21 benefit on account of increasing age. That that is  22 not on account of increasing age; that is on  23 account of a change in interest rates.  24 So, where ERISA prohibits reducing</p>	<p style="text-align: right;">Page 137</p> <p>1 lawyers to argue whether a notice is required in  2 that situation.  3 Q. And your analysis of whether the  4 benefits were increased or decreased was focused  5 solely upon the benefits as of 1-1-99, is that  6 correct?  7 A. Yes.  8 Q. What you've been referring, and I've  9 been treating as, an E-Mail from you to Ms. Hoffman  10 technically comes from Ms. Miller.  11 Did you dictate this to her?  12 A. She's my assistant. I dictate, she  13 prints, I review, she hits the send button.  14 Q. Fair enough. I just wanted to  15 button that down on the record.  16 A. Yes. No. This is my work product  17 sent from her computer.  18 Q. That's what I had suspected, but I  19 just wanted to know that.  20 A. Okay.  21 Q. Now, we've been talking some today  22 about some of the assumptions that went into your  23 work and the idea of keeping interest rates static  24 for purposes of the back-loading concept and the</p>

35 (Pages 134 to 137)

ETHAN E. KRA

<p style="text-align: right;">Page 138</p> <p>1 idea of keeping compensation static.</p> <p>2 Are you familiar with the process</p> <p>3 that is used to reflect pension liabilities on a</p> <p>4 sponsor's financial statements?</p> <p>5 A. Yes.</p> <p>6 Q. That's something that you work with</p> <p>7 from time to time, is it not?</p> <p>8 A. Yes.</p> <p>9 Q. When I look at a plan sponsor's</p> <p>10 balance sheet, and I see an entry in there that's</p> <p>11 reflective of pension liabilities as a liability on</p> <p>12 the balance sheet, what is the actuarial work</p> <p>13 that's behind that?</p> <p>14 A. I have to ask you to refine your</p> <p>15 question.</p> <p>16 Q. Okay.</p> <p>17 A. Do you mean, using accounting</p> <p>18 standards in 1998, '99 or using accounting</p> <p>19 standards of 2007?</p> <p>20 Q. Let's start with 1998 and '99.</p> <p>21 A. Okay.</p> <p>22 In 1998, '99 there were two concepts</p> <p>23 used in determining financial statements: One was</p> <p>24 the accumulated benefit obligation, and one was the</p>	<p style="text-align: right;">Page 140</p> <p>1 purposes, were they maintained as static or was</p> <p>2 there some other assumption that was used?</p> <p>3 A. The interest rate that would be used</p> <p>4 for determining the liabilities would be based on a</p> <p>5 snapshot picture of high quality corporate bonds as</p> <p>6 of the date of determination, reflective of the</p> <p>7 duration of the liability, the time period over</p> <p>8 which benefits were to be paid. Reflective of high</p> <p>9 quality corporate bonds, which the SEC, I believe,</p> <p>10 has stated, at least in speeches, to be AA, AAA</p> <p>11 bonds.</p> <p>12 It is not based on any projection of</p> <p>13 future changes in those interest rates. In fact,</p> <p>14 it would be, I believe, malpractice for an actuary</p> <p>15 to determine financial statement entries based on</p> <p>16 anything other than the spot rate, and the actuary</p> <p>17 is required to ignore any presumption about changes</p> <p>18 in that going forward.</p> <p>19 Q. Does that change when you deal with</p> <p>20 projected benefit obligation or is that interest</p> <p>21 rate --</p> <p>22 A. Projected benefit obligation would</p> <p>23 be determined the same way.</p> <p>24 The only thing that would change is</p>
<p style="text-align: right;">Page 139</p> <p>1 projected benefit obligation. The accumulated</p> <p>2 benefit obligation only reflected salaries earned</p> <p>3 to date. Did not reflect any projection of future</p> <p>4 pay increases. It was based on service to date and</p> <p>5 pay to date.</p> <p>6 The projected benefit obligation</p> <p>7 would reflect service to date, but future salary</p> <p>8 increases.</p> <p>9 The minimum liability on a balance</p> <p>10 sheet, the one which was compared to the assets for</p> <p>11 a minimum liability on balance sheets, was based on</p> <p>12 the accumulated benefit obligation, which did not</p> <p>13 reflect salary increases.</p> <p>14 The profit and loss statement, which</p> <p>15 would affect the balance sheet, the earnings, the</p> <p>16 charge to earnings, was based on the projected</p> <p>17 benefit obligation.</p> <p>18 So, both concepts were used in</p> <p>19 determining corporate financials.</p> <p>20 Q. Now, before we leave '98 and '99, we</p> <p>21 talked about accumulated benefit obligation. To</p> <p>22 the extent that interest rates were relevant in</p> <p>23 that time period to determining an accumulated</p> <p>24 benefit obligation for financial reporting</p>	<p style="text-align: right;">Page 141</p> <p>1 the duration of the liability, so you might be</p> <p>2 looking at different bonds on the same date,</p> <p>3 because the projected benefit obligation would</p> <p>4 generally show more of the benefits being paid at a</p> <p>5 later date, so, therefore, you would have longer</p> <p>6 term bonds, but they would be bonds available in</p> <p>7 the marketplace at the market price of the</p> <p>8 determination date, which is technically called the</p> <p>9 measurement date.</p> <p>10 Q. Right.</p> <p>11 Let's go to 2007. What's changed?</p> <p>12 A. In 2007, under FAS 158, the primary</p> <p>13 driver is the projected benefit obligation.</p> <p>14 Q. And that takes into account future</p> <p>15 salary increases?</p> <p>16 A. That's current accounting.</p> <p>17 Q. Now, projected benefit obligation,</p> <p>18 as of '98 and '99, what standards were used to</p> <p>19 determine the rate of future salary growth?</p> <p>20 A. The standards were that one would</p> <p>21 look at -- first of all, they would have to be</p> <p>22 consistent with the discount rate. All the</p> <p>23 economic assumptions would have to be internally</p> <p>24 consistent and reasonably related. You couldn't --</p>

36 (Pages 138 to 141)



ETHAN E. KRA

<p style="text-align: right;">Page 142</p> <p>1 you would be improper to assume interest rate of 6  2 percent and salary increases of 12 percent.  3 Q. Right.  4 A. That would be an unstable situation,  5 unless you happen to have some group for which that  6 was appropriate. But, long-term that's not --  7 that's not viable for 40 years.  8 You would look at the pay structure  9 of the company, you would look at the underlying  10 interest rate presumed in the other economic  11 assumptions, you would allow something for  12 productivity, which is the difference between the  13 taxable wage base and the Consumer Price Index, and  14 then you would put something on for seniority and  15 merit, which generally would be a positive entry  16 through about somewhere in the late 40s to early  17 50s, and then possibly a negative entry thereafter,  18 as -- depending on the pay structure of the plan  19 sponsor. You'd have to look at data.  20 Q. Have those standards changed with  21 the change within the accounting?  22 A. No.  23 Q. So you are still applying the same  24 actuarial standards. The main difference between</p>	<p style="text-align: right;">Page 144</p> <p>1 cost, as well as the accrued liability shown on one  2 of the lines on the Schedule B or the unfunded  3 liability on a different line, depending on the  4 funding method chosen.  5 MR. MALONE: Why don't we take five  6 minutes and I'll see if I have anything else to go  7 over with you.  8 THE WITNESS: Okay.  9 (Recess called at 1:17 p.m.)  10 (Resumed at 1:22 p.m.)  11 MR. MALONE: I don't have anything  12 more for you today. Thank you for your time.  13 You've been very patient.  14 EXAMINATION  15 BY MR. BASSMAN:  16 Q. Mr. Kra, I have just one or two  17 quick questions for you. If you can turn back to  18 what was marked as Plaintiffs' 34, the set of  19 spreadsheets, and if you could turn to the second  20 page, and I believe you testified a little earlier  21 about a similar set of tables dealing with Mr.  22 Ward.  23 A. Yes.  24 Q. I just want to make sure I</p>
<p style="text-align: right;">Page 143</p> <p>1 now and '98 and '99 is that, across the board, the  2 focus is on projected benefit obligation?  3 A. On corporate financials, the focus  4 now has been primarily on the projected benefit  5 obligation. In 1998 and '99, the focus was on both  6 numbers. They were both very important in the  7 determination of corporate balance sheets.  8 Q. Now, when an enrolled actuary  9 prepares the Schedule B for a pension plan, he's  10 required to calculate liabilities under a number of  11 different tests, I think. Is there -- are there  12 different liability standards for purposes of  13 Schedule B?  14 A. There are a number of different  15 liabilities shown on a Schedule B. Some of them  16 use mandated assumptions, some of them use the  17 actuary's best estimate assumptions.  18 Q. Okay.  19 A. That's statutory and regulatory.  20 Q. Right.  21 Which ones use the actuary's best  22 estimate?  23 A. The primary entries in the funding  24 standard account for amortization schedules, normal</p>	<p style="text-align: right;">Page 145</p> <p>1 understand, and the record is clear, on exactly  2 what you were doing on these spreadsheets, so,  3 looking at the second page of P-34, which is Bates  4 numbered KRA 00415, on the far left you have two  5 columns headed valuation year 1999.  6 Do you see that?  7 A. Yes.  8 Q. And, in each of these columns, you  9 are computing an accrued benefit under the heritage  10 versus the cash balance plan for certain years,  11 right?  12 A. Correct.  13 Q. Now, for valuation year 1999, what  14 assumptions are you holding constant for each one  15 of these calculations, old plan versus new plan?  16 A. I hold constant the pay, and I hold  17 constant the interest rate used in -- crediting in  18 the cash balance account, and I hold constant the  19 interest rate used for converting a lump sum into  20 an annuity.  21 Q. And, when you say you hold the pay  22 constant, that's the pay as of January 1, 1999?  23 A. For the old plan, it would be the  24 pay as of January 1, 1999. For the new plan, I'm</p>

37 (Pages 142 to 145)



ETHAN E. KRA

<p style="text-align: right;">Page 146</p> <p>1 holding constant the pay during '99, because that  2 was the first year there was a cash balance plan.  3 So I used pay for the year.  4 Given the difference in magnitude of  5 the numbers using spot pay versus full year's pay  6 might change the numbers slightly, but would not  7 change the direction of the numbers, the -- the  8 relative positioning of the numbers.  9 Q. And you used the same methodology  10 for each valuation year for Mr. Troup here?  11 A. When I got to the next valuation  12 year, I looked at the interest rates and the pay in  13 that year, and then I held them constant for all  14 future years. So, in any given column, interest  15 rates and pay are being held constant, but they  16 will vary as you go from one set of columns to the  17 next set of columns.  18 MR. MALONE: Sean, could you read  19 back his answer, because I think he misspoke.  20 (Pertinent portion of the record is  21 read.)  22 BY MR. BASSMAN:  23 Q. And you followed that same  24 methodology for each one of the spreadsheets in</p>	<p style="text-align: right;">Page 148</p> <p>1 old plan, is that correct?  2 MR. BASSMAN: Objection. You can  3 answer.  4 THE WITNESS: What's held constant  5 under the old plan is -- and we can -- my belief is  6 that we recognized pay through that year and then  7 we hold that constant, so average pay will actually  8 increment very slightly as you go through the next  9 few years because -- or will change slightly,  10 because you have a different final average pay as  11 you are recognizing more of the most recent year.  12 Q. And, in fact, that's illustrated --  13 if we go to the first page of P-34, you've got a  14 series of rows there that are marked Pay N-1, Pay  15 N-2?  16 A. Yes.  17 Q. And if the I go out, eventually the  18 numbers are all the same?  19 A. Yes.  20 Q. Now, let's go back to 416 for a  21 minute. When we switch over to the new plan,  22 what's being kept constant? I understand rate.  23 That's easy.  24 A. What's being held constant in new</p>
<p style="text-align: right;">Page 147</p> <p>1 P-34 that discussions valuation years --  2 MR. MALONE: Object to the form.  3 BY MR. BASSMAN:  4 Q. -- in a format similar to KRA 415?  5 MR. MALONE: You can answer. I just  6 objected to the form of his question. He's leading  7 you. He's not supposed to do that.  8 THE WITNESS: Okay.  9 Yes.  10 MR. BASSMAN: I have nothing  11 further.  12 FURTHER EXAMINATION  13 BY MR. MALONE:  14 Q. That stimulated a question on my  15 part. Can you drag it back for me.  16 Let's go back to KRA 416 in  17 Plaintiffs' 34 for a second, which is Mr. Troup,  18 and this is what we were just looking at?  19 A. Um-hum.  20 Q. Now, I understand 1999.  21 Now we are looking at, say, 2003.  22 The valuation year 2003, the left-hand column,  23 which is the heritage pay, what is going be to kept  24 constant here is the average pay formula under the</p>	<p style="text-align: right;">Page 149</p> <p>1 plan, on Page 415, in a given column, is the pay,  2 because -- since it's not a final average pay plan,  3 but each year's pay is used directly in that year's  4 benefit, so the -- in the 1999 column we have 1999  5 pay --  6 Q. 1999 termination -- or transition  7 credits, to the extent that they qualify?  8 A. Yes, transition credits, but the key  9 is that the pay for '99 is assumed to be the same  10 pay in 2000, in 2001, in 2002, in 2003. So, there  11 is no phase-in to getting to the same number,  12 whereas, in final average pay, five -- it takes  13 five years until you get the same number.  14 Q. And then the same thing happens in  15 each subsequent year?  16 A. Yes, and, in addition, the interest  17 crediting rate --  18 Q. Will change?  19 A. -- is -- well, for a given column is  20 the same.  21 Q. Right.  22 A. Within a given column the interest  23 crediting rate is identical and the interest  24 conversion rate is identical.</p>

38 (Pages 146 to 149)

ETHAN E. KRA

Page 150

Page 152

1 When you go from one column to the  
 2 next, those two interest rates will change, because  
 3 now we are using the interest rate from one year  
 4 later, and you will have a new pay level.  
 5 Q. Now, interest crediting rate and  
 6 interest conversion rate, under the cash balance  
 7 sub-plan, were the same, were they not?  
 8 A. I believe they are.  
 9 Q. You know what, why don't we just  
 10 button that down.  
 11 If you go to the plan document and  
 12 go to -- I believe you'll find Attachment A in  
 13 there somewhere.  
 14 A. Schedule A?  
 15 Q. Schedule A.  
 16 A. Actuarial equivalence -- A.1.1,  
 17 Unless otherwise specified, actuarial equivalence  
 18 shall be determined by using the Applicable  
 19 Interest Rate, and it goes on to describe the  
 20 30-year Treasury for the October preceding and  
 21 cites exactly where you get it from, from the  
 22 Internal Revenue Bulletin, and then it goes on and  
 23 describes some other aspects.  
 24 There are some different situations

Page 151

1 for disability benefits in A.1.2.  
 2 Q. But we don't have that in this case?  
 3 A. We don't have that issue.  
 4 Q. So, the answer is that the crediting  
 5 rate and the conversion rate are the same, is that  
 6 correct?  
 7 A. Yes.  
 8 MR. MALONE: Thank you very much.  
 9 MR. BASSMAN: I have no further  
 10 questions. We will read and sign.  
 11 MR. MALONE: That's fine.  
 12 MR. BASSMAN: Thank you again for  
 13 your time.  
 14 (1:29 p.m.)

## C E R T I F I C A T E

1 I, Sean M. Fallon, a Registered  
 2 Professional Reporter and Notary Public, do hereby  
 3 certify that, prior to the commencement of the  
 4 examination, the witness and/or witnesses were  
 5 sworn by me to testify to the truth and nothing but  
 6 the truth.

7 I do further certify that the  
 8 foregoing is a true and accurate computer-aided  
 9 transcript of the testimony as taken  
 10 stenographically by and before me at the time,  
 11 place and on the date hereinbefore set forth.

12 I do further certify that I am  
 13 neither of counsel nor attorney for any party in  
 14 this action and that I am not interested in the  
 15 event nor outcome of this litigation.  
 16  
 17  
 18  
 19  
 20  
 21

Registered Professional Reporter  
 XI00840  
 Notary Public  
 My commission expires 12-22-10

22 Dated: \_\_\_\_\_  
 23  
 24

Page 153

## J U R A T

1 I, ETHAN E. KRA, do hereby certify  
 2 that I have read the foregoing transcript of my  
 3 testimony taken on Friday, May 25, 2007, and have  
 4 signed it subject to the following changes:

PAGE LINE CORRECTION

ETHAN E. KRA

DATE \_\_\_\_\_

Sworn and subscribed to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 2007.

NOTARY PUBLIC

39 (Pages 150 to 153)

[illegible]

EXHIBIT  
P-34  
5/25/07

KRA00414

B0190

Name	Beginning of Year Factors					
	Thomas S Troup					
	Valuation Year 1999		Valuation Year 2000		Valuation Year 2001	
	Old Plan	New Plan	Old Plan	New Plan	Old Plan	New Plan
1/1/1999	17,357.06	23,021.41				
1/1/2000	18,417.65	24,416.40	18,417.65	31,930.13		
1/1/2001	19,371.13	25,744.85	19,489.02	33,696.46	19,489.02	30,696.07
1/1/2002	20,268.15	27,009.91	20,515.05	35,358.73	20,603.63	32,248.51
1/1/2003	21,054.77	28,214.62	21,441.78	36,923.07	21,626.90	33,715.84
1/1/2004	21,826.67	29,361.85	22,422.87	38,395.25	22,498.82	35,102.73
1/1/2005	22,587.46	30,454.35	23,125.88	39,780.71	23,528.00	36,413.60
1/1/2006	23,337.14	31,494.72	23,888.81	41,094.54	24,411.38	37,652.60
1/1/2007	24,075.72	32,485.46	24,640.02	42,311.56	25,172.71	38,823.88
1/1/2008	24,806.09	33,428.93	25,382.41	43,466.30	25,924.50	39,930.56
1/1/2009	25,530.06	34,327.39	26,117.78	44,553.01	26,668.56	40,976.76
1/1/2010	26,249.66	35,182.99	26,848.16	45,575.69	27,406.91	41,965.60
1/1/2011	26,961.49	35,997.76	27,570.16	46,538.13	28,136.14	42,900.24
1/1/2012	27,666.60	36,773.66	28,284.82	47,443.87	28,857.32	43,783.64
1/1/2013	28,365.31	37,512.54	28,992.45	48,296.25	29,570.76	44,618.61
1/1/2014	29,057.92	38,216.17	29,693.38	49,098.42	30,276.77	45,407.81
2/1/2014	28,982.51	38,278.10	29,608.92	49,171.96	30,181.38	45,478.87

KRA00415

B0191

Name	Thomas S Troup		Valuation Year		Valuation Year		Valuation Year		Valuation Year	
	2003		2004		2005		2006			
	Old Plan	New Plan	Old Plan	New Plan	Old Plan	New Plan	Old Plan	New Plan	Old Plan	New Plan
1/1/1999										
1/1/2000										
1/1/2001										
1/1/2002										
1/1/2003	22,009.65	28,606.42	23,293.53	31,153.28	24,747.73	30,798.59	26,431.54	31,087.15		
1/1/2004	23,293.53	29,887.92	24,747.73	32,419.64	26,431.54	32,012.34	28,490.57	32,289.68		
1/1/2005	24,767.31	31,109.21	26,087.24	33,623.86	28,050.64	33,169.84	30,153.69	33,438.44		
1/1/2006	26,127.95	32,273.12	27,335.79	34,768.99	29,241.52	34,273.69	31,864.28	34,535.84		
1/1/2007	27,399.18	33,382.34	28,148.88	35,857.93	30,447.55	35,326.38	33,646.17	35,584.18		
1/1/2008	28,217.49	34,439.45	28,952.95	36,893.43	31,692.57	36,330.29	35,060.68	36,585.65		
1/1/2009	29,026.25	35,446.89	29,750.02	37,878.13	32,537.89	37,287.66	35,965.49	37,542.35		
1/1/2010	29,828.16	36,407.00	30,536.70	38,814.51	33,373.51	38,200.66	36,860.19	38,456.27		
1/1/2011	30,619.83	37,322.00	31,314.03	39,704.95	34,199.75	39,071.35	37,745.09	39,329.34		
1/1/2012	31,402.31	38,194.00	32,082.35	40,551.69	35,016.90	39,901.68	37,627.30	39,405.00		
1/1/2013	32,175.93	39,025.04	32,841.94	41,356.88	34,904.83	39,974.08				
1/1/2014	32,940.97	39,817.03	32,730.74	41,427.76						
2/1/2014	32,832.66	39,886.34								

KRA00416

B0192

KRA00417



Name	Beginning of Year Factors				Maurice Ward			
	Valuation Year 2000		Valuation Year 2001		Valuation Year 2002		Valuation Year 2002	
	Old Plan	New Plan	Old Plan	New Plan	Old Plan	New Plan	Old Plan	New Plan
1/1/1999	17,433.84	23,014.11						
1/1/2000	19,046.34	24,818.56						
1/1/2001	20,671.48	26,693.15						
1/1/2002	22,272.06	28,478.29						
1/1/2003	23,377.50	30,178.27						
1/1/2004	24,497.95	31,797.14						
1/1/2005	25,604.06	33,338.78						
1/1/2006	26,710.18	34,929.20						
1/1/2007	27,816.29	36,443.75						
1/1/2008	28,922.40	37,886.03						
1/1/2009	30,028.51	39,259.51						
1/1/2010	31,134.62	40,567.46						
1/1/2011	32,240.74	41,813.01						
1/1/2012	33,346.85	42,998.13						
1/1/2013	34,452.96	44,128.66						
1/1/2014	35,559.07	45,204.30						
1/1/2015	36,665.18	46,228.63						
1/1/2016	37,771.30	47,204.08						
1/1/2017	38,877.41	48,101.31						
1/1/2018	39,983.52	48,781.77						
1/1/2019	41,089.63	49,429.76						
1/1/2020	42,195.75	50,046.84						
9/1/2020	42,933.15	50,458.26						

KRA00418

B0194

[illegible]

KRA00419

B0195

B0196

Name	Beginning of Year Factors							
	Jerome Charles		Valuation Year 2000		Valuation Year 2001		Valuation Year 2002	
	Old Plan	New Plan	Old Plan	New Plan	Old Plan	New Plan	Old Plan	New Plan
1/1/1999	17,254.57	25,425.91						
1/1/2000	18,196.68	26,819.99	18,196.68	35,386.04				
1/1/2001	19,092.54	28,147.56	19,302.88	37,296.34	19,302.88	33,865.04	21,561.88	32,523.04
1/1/2002	20,163.90	29,411.79	20,727.48	39,094.10	21,561.88	35,856.08	23,781.06	34,261.00
1/1/2003	21,067.62	30,615.70	21,882.89	40,786.95	23,626.49	37,737.97	26,382.43	35,911.17
1/1/2004	22,104.23	31,762.18	23,332.43	42,378.13	26,060.02	39,516.70	28,901.70	37,477.99
1/1/2005	23,013.42	32,853.96	24,611.82	43,875.51	28,398.19	41,187.92	31,201.97	38,965.66
1/1/2006	23,922.61	33,893.65	25,584.16	45,286.62	30,504.10	42,786.97	32,568.92	40,378.19
1/1/2007	24,831.80	34,883.73	26,556.50	46,613.65	31,653.43	44,288.90	33,761.39	41,719.36
1/1/2008	25,740.99	35,826.58	27,528.84	47,862.51	32,822.75	45,708.50	34,953.87	42,992.79
1/1/2009	26,650.17	36,724.45	28,501.17	49,037.80	33,982.07	47,050.28	36,146.35	44,201.90
1/1/2010	27,559.36	37,579.48	29,473.51	50,143.84	35,141.40	48,318.50	37,338.82	45,349.93
1/1/2011	28,468.55	38,393.72	30,445.85	51,184.73	36,300.72	49,517.20	38,531.30	46,439.97
1/1/2012	29,377.74	39,169.11	31,418.19	52,164.29	37,460.04	50,650.18	39,723.78	47,474.94
1/1/2013	30,286.93	39,907.50	32,380.53	53,086.15	38,619.36	51,721.06	40,916.25	48,457.64
1/1/2014	31,196.12	40,610.67	33,362.86	53,953.70	39,778.69	52,733.22	41,909.98	49,211.80
1/1/2014	31,953.78	41,151.88	34,173.15	54,620.37	40,744.79	53,509.38		

KRA00421

B0197

Name	Jerome Charles	Valuation Year		Valuation Year		Valuation Year		Valuation Year	
		2003		2004		2005		2006	
		Old Plan	New Plan	Old Plan	New Plan	Old Plan	New Plan	Old Plan	New Plan
1/1/1999									
1/1/2000									
1/1/2001									
1/1/2002									
1/1/2003		23,781.06	31,734.28						
1/1/2004		26,639.88	33,357.04	26,639.88	34,826.41				
1/1/2005		29,437.77	34,903.55	29,328.54	36,414.44	29,328.54	34,519.60	32,101.12	34,973.03
1/1/2006		32,037.85	36,377.40	31,810.76	37,924.54	32,101.12	36,060.31	34,301.39	36,402.51
1/1/2007		33,725.78	37,782.01	33,372.19	39,360.54	33,974.99	37,529.61	36,385.71	37,768.07
1/1/2008		35,260.41	39,120.62	34,771.71	40,726.09	35,709.00	38,930.81	38,218.16	39,072.58
1/1/2009		36,505.84	40,396.34	35,999.87	42,024.63	37,167.25	40,267.07	40,218.76	40,318.77
1/1/2010		37,751.26	41,612.12	37,228.03	43,259.45	38,769.74	41,541.40	41,918.79	41,509.25
1/1/2011		38,996.68	42,770.78	38,456.20	44,433.68	40,048.76	42,756.66	43,258.57	42,646.50
1/1/2012		40,242.10	43,875.00	39,684.36	45,550.29	41,327.78	43,915.61	44,597.35	43,732.91
1/1/2013		41,487.53	44,927.34	40,912.52	46,612.11	42,606.80	45,020.83	45,936.13	44,770.75
1/1/2014		42,732.95	45,930.23	42,140.68	47,621.84	43,885.83	46,074.84	47,051.77	45,568.23
1/1/2014		43,770.80	46,700.43	43,164.15	48,396.79	44,951.68	46,884.18		

KRA00422

B0198

[illegible]



Name	Beginning of Year Factors							
	Valuation Year 1999		Valuation Year 2000		Valuation Year 2001		Valuation Year 2002	
	Old Plan	New Plan	Old Plan	New Plan	Old Plan	New Plan	Old Plan	New Plan
1/1/1999	11,141.94	15,142.38						
1/1/2000	12,624.46	16,887.21						
1/1/2001	14,020.51	18,548.80						
1/1/2002	15,364.27	20,131.11			14,138.56	23,039.23		
1/1/2003	16,416.98	21,637.93			15,907.84	25,177.14	15,907.84	22,399.67
1/1/2004	17,533.37	23,072.86			17,416.55	27,197.84	17,430.32	24,155.82
1/1/2005	18,589.91	24,563.56			19,096.90	29,107.78	19,126.21	25,823.27
1/1/2006	19,646.45	25,983.13			20,748.88	31,077.12	20,795.49	27,550.41
1/1/2007	20,702.99	27,334.98			22,295.00	32,938.50	22,360.69	29,190.32
1/1/2008	21,759.52	28,622.33			23,493.97	34,697.83	23,580.50	30,747.36
1/1/2009	22,816.06	29,848.27			24,692.94	36,360.73	24,783.88	32,225.80
1/1/2010	23,872.60	31,015.71			25,891.91	37,932.46	25,987.27	33,629.54
1/1/2011	24,929.14	32,127.45			27,090.88	39,418.02	27,190.66	34,962.37
1/1/2012	25,985.68	33,186.16			28,289.85	40,822.15	28,394.05	36,227.87
1/1/2013	27,042.22	34,194.35			29,488.82	42,149.30	29,597.43	37,429.45
1/1/2014	28,098.76	35,154.44			30,687.80	43,403.70	30,800.82	38,570.34
1/1/2015	29,155.30	36,068.73			31,886.77	44,589.33	32,004.21	39,653.60
1/1/2016	30,211.83	36,939.40			33,085.74	45,709.97	33,207.59	40,682.13
1/1/2017	31,268.37	37,768.52			34,284.71	46,769.17	34,410.98	41,658.72
1/1/2018	32,324.91	38,558.09			35,483.68	47,770.31	35,614.37	42,585.97
1/1/2019	33,381.45	39,309.99			36,682.65	48,716.56	36,817.76	43,466.39
1/1/2019	33,469.50	39,376.03			37,881.63	49,610.94	38,021.14	44,302.33
					37,981.54	49,691.24	38,121.43	44,376.31

KRA00424

B0200

Name	Joseph Fink	Valuation Year		Valuation Year		Valuation Year		Valuation Year	
		2003		2004		2005		2006	
		Old Plan	New Plan	Old Plan	New Plan	Old Plan	New Plan	Old Plan	New Plan
1/1/1999									
1/1/2000									
1/1/2001									
1/1/2002									
1/1/2003		17,430.32	22,024.34	19,194.07	24,803.58				
1/1/2004		19,194.07	23,537.03	21,039.66	26,449.92				
1/1/2005		20,939.40	25,109.70	22,800.73	28,015.48	21,039.66	24,770.99	22,954.66	25,305.63
1/1/2006		22,588.81	26,608.48	24,236.00	29,504.21	22,954.66	26,283.57	25,112.06	26,868.94
1/1/2007		23,901.02	28,036.85	25,674.41	29,504.21	24,560.41	27,726.05	27,345.46	28,362.36
1/1/2008		25,204.99	29,398.10	27,044.10	30,919.90	26,185.87	29,101.68		
1/1/2009		26,428.82	30,695.40	28,296.42	32,266.13	27,759.15	30,413.55	29,583.00	29,789.01
1/1/2010		27,652.66	31,931.74	29,548.75	33,546.30	29,231.63	31,664.61	31,776.03	31,151.88
1/1/2011		28,876.49	33,110.00	30,801.07	34,763.65	30,525.35	32,857.69	33,846.61	32,453.82
1/1/2012		30,100.33	34,232.90	32,053.40	35,921.27	31,819.06	33,995.48	35,281.08	33,697.55
1/1/2013		31,324.16	35,303.04	33,305.72	37,022.08	33,112.78	35,080.53	36,715.56	34,885.68
1/1/2014		32,547.99	36,322.90	34,558.05	38,068.89	34,406.49	36,115.29	38,150.04	36,020.69
1/1/2015		33,771.83	37,294.84	35,810.38	39,064.32	35,700.21	37,102.10	39,584.61	37,104.95
1/1/2016		34,995.66	38,221.12	37,062.70	40,010.92	36,993.92	38,043.17	41,018.99	38,140.74
1/1/2017		36,219.50	39,103.88	38,315.03	40,911.05	38,287.64	38,940.62	42,453.17	39,130.23
1/1/2018		37,443.33	39,945.16	39,557.35	41,767.04	39,581.36	39,796.48	43,887.94	40,075.47
1/1/2019		38,667.17	40,746.92	39,557.35	42,581.01	40,875.07	40,612.67	45,322.42	40,978.46
2/1/2019		38,769.15	40,817.12	39,671.71	42,652.74	40,982.88	40,683.95	45,411.96	41,056.74

KRA00425

B0201

Report		11/01/2005		11/01/2006		11/01/2007		11/01/2008		11/01/2009		11/01/2010		11/01/2011		11/01/2012		11/01/2013		11/01/2014		11/01/2015		11/01/2016		11/01/2017		11/01/2018		11/01/2019		11/01/2020		11/01/2021		11/01/2022		11/01/2023		11/01/2024		11/01/2025		11/01/2026		11/01/2027		11/01/2028		11/01/2029		11/01/2030		11/01/2031		11/01/2032		11/01/2033		11/01/2034		11/01/2035		11/01/2036		11/01/2037		11/01/2038		11/01/2039		11/01/2040		11/01/2041		11/01/2042		11/01/2043		11/01/2044		11/01/2045		11/01/2046		11/01/2047		11/01/2048		11/01/2049		11/01/2050		11/01/2051		11/01/2052		11/01/2053		11/01/2054		11/01/2055		11/01/2056		11/01/2057		11/01/2058		11/01/2059		11/01/2060		11/01/2061		11/01/2062		11/01/2063		11/01/2064		11/01/2065		11/01/2066		11/01/2067		11/01/2068		11/01/2069		11/01/2070		11/01/2071		11/01/2072		11/01/2073		11/01/2074		11/01/2075		11/01/2076		11/01/2077		11/01/2078		11/01/2079		11/01/2080		11/01/2081		11/01/2082		11/01/2083		11/01/2084		11/01/2085		11/01/2086		11/01/2087		11/01/2088		11/01/2089		11/01/2090		11/01/2091		11/01/2092		11/01/2093		11/01/2094		11/01/2095		11/01/2096		11/01/2097		11/01/2098		11/01/2099		11/01/2100		11/01/2101		11/01/2102		11/01/2103		11/01/2104		11/01/2105		11/01/2106		11/01/2107		11/01/2108		11/01/2109		11/01/2110		11/01/2111		11/01/2112		11/01/2113		11/01/2114		11/01/2115		11/01/2116		11/01/2117		11/01/2118		11/01/2119		11/01/2120		11/01/2121		11/01/2122		11/01/2123		11/01/2124		11/01/2125		11/01/2126		11/01/2127		11/01/2128		11/01/2129		11/01/2130		11/01/2131		11/01/2132		11/01/2133		11/01/2134		11/01/2135		11/01/2136		11/01/2137		11/01/2138		11/01/2139		11/01/2140		11/01/2141		11/01/2142		11/01/2143		11/01/2144		11/01/2145		11/01/2146		11/01/2147		11/01/2148		11/01/2149		11/01/2150		11/01/2151		11/01/2152		11/01/2153		11/01/2154		11/01/2155		11/01/2156		11/01/2157		11/01/2158		11/01/2159		11/01/2160		11/01/2161		11/01/2162		11/01/2163		11/01/2164		11/01/2165		11/01/2166		11/01/2167		11/01/2168		11/01/2169		11/01/2170		11/01/2171		11/01/2172		11/01/2173		11/01/2174		11/01/2175		11/01/2176		11/01/2177		11/01/2178		11/01/2179		11/01/2180		11/01/2181		11/01/2182		11/01/2183		11/01/2184		11/01/2185		11/01/2186		11/01/2187		11/01/2188		11/01/2189		11/01/2190		11/01/2191		11/01/2192		11/01/2193		11/01/2194		11/01/2195		11/01/2196		11/01/2197		11/01/2198		11/01/2199		11/01/2200		11/01/2201		11/01/2202		11/01/2203		11/01/2204		11/01/2205		11/01/2206		11/01/2207		11/01/2208		11/01/2209		11/01/2210		11/01/2211		11/01/2212		11/01/2213		11/01/2214		11/01/2215		11/01/2216		11/01/2217		11/01/2218		11/01/2219		11/01/2220		11/01/2221		11/01/2222		11/01/2223		11/01/2224		11/01/2225		11/01/2226		11/01/2227		11/01/2228		11/01/2229		11/01/2230		11/01/2231		11/01/2232		11/01/2233		11/01/2234		11/01/2235		11/01/2236		11/01/2237		11/01/2238		11/01/2239		11/01/2240		11/01/2241		11/01/2242		11/01/2243		11/01/2244		11/01/2245		11/01/2246		11/01/2247		11/01/2248		11/01/2249		11/01/2250		11/01/2251		11/01/2252		11/01/2253		11/01/2254		11/01/2255		11/01/2256		11/01/2257		11/01/2258		11/01/2259		11/01/2260		11/01/2261		11/01/2262		11/01/2263		11/01/2264		11/01/2265		11/01/2266		11/01/2267		11/01/2268		11/01/2269		11/01/2270		11/01/2271		11/01/2272		11/01/2273		11/01/2274		11/01/2275		11/01/2276		11/01/2277		11/01/2278		11/01/2279		11/01/2280		11/01/2281		11/01/2282		11/01/2283		11/01/2284		11/01/2285		11/01/2286		11/01/2287		11/01/2288		11/01/2289		11/01/2290		11/01/2291		11/01/2292		11/01/2293		11/01/2294		11/01/2295		11/01/2296		11/01/2297		11/01/2298		11/01/2299		11/01/2300		11/01/2301		11/01/2302		11/01/2303		11/01/2304		11/01/2305		11/01/2306		11/01/2307		11/01/2308		11/01/2309		11/01/2310		11/01/2311		11/01/2312		11/01/2313		11/01/2314		11/01/2315		11/01/2316		11/01/2317		11/01/2318		11/01/2319		11/01/2320		11/01/2321		11/01/2322		11/01/2323		11/01/2324		11/01/2325		11/01/2326		11/01/2327		11/01/2328		11/01/2329		11/01/2330		11/01/2331		11/01/2332		11/01/2333		11/01/2334		11/01/2335		11/01/2336		11/01/2337		11/01/2338		11/01/2339		11/01/2340		11/01/2341		11/01/2342		11/01/2343		11/01/2344		11/01/2345		11/01/2346		11/01/2347		11/01/2348		11/01/2349		11/01/2350		11/01/2351		11/01/2352		11/01/2353		11/01/2354		11/01/2355		11/01/2356		11/01/2357		11/01/2358		11/01/2359		11/01/2360		11/01/2361		11/01/2362		11/01/2363		11/01/2364		11/01/2365		11/01/2366		11/01/2367		11/01/2368		11/01/2369		11/01/2370		11/01/2371		11/01/2372		11/01/2373		11/01/2374		11/01/2375		11/01/2376		11/01/2377		11/01/2378		11/01/2379		11/01/2380		11/01/2381		11/01/2382		11/01/2383		11/01/2384		11/01/2385		11/01/2386		11/01/2387		11/01/2388		11/01/2389		11/01/2390		11/01/2391		11/01/2392		11/01/2393		11/01/2394		11/01/2395		11/01/2396		11/01/2397		11/01/2398		11/01/2399		11/01/2400		11/01/2401		11/01/2402		11/01/2403		11/01/2404		11/01/2405		11/01/2406		11/01/2407		11/01/2408		11/01/2409		11/01/2410		11/01/2411		11/01/2412		11/01/2413		11/01/2414		11/01/2415		11/01/2416		11/01/2417		11/01/2418		11/01/2419		11/01/2420		11/01/2421		11/01/2422		11/01/2423		11/01/2424		11/01/2425		11/01/2426		11/01/2427		11/01/2428		11/01/2429		11/01/2430		11/01/2431		11/01/2432		11/01/2433		11/01/2434		11/01/2435		11/01/2436		11/01/2437		11/01/2438		11/01/2439		11/01/2440		11/01/2441		11/01/2442		11/01/2443		11/01/2444		11/01/2445		11/01/2446		11/01/2447		11/01/2448		11/01/2449		11/01/2450		11/01/2451		11/01/2452		11/01/2453		11/01/2454		11/01/2455		11/01/2456		11/01/2457		11/01/2458		11/01/2459		11/01/2460		11/01/2461		11/01/2462		11/01/2463		11/01/2464		11/01/2465		11/01/2466		11/01/2467		11/01/2468		11/01/2469		11/01/2470		11/01/2471		11/01/2472		11/01/2473		11/01/2474		11/01/2475		11/01/2476		11/01/2477		11/01/2478		11/01/2479		11/01/2480		11/01/2481		11/01/2482		11/01/2483		11/01/2484		11/01/2485		11/01/2486		11/01/2487		11/01/2488		11/01/2489		11/01/2490		11/01/2491		11/01/2492		11/01/2493		11/01/2494		11/01/2495		11/01/2496		11/01/2497		11/01/2498		11/01/2499		11/01/2500		11/01/2501		11/01/2502		11/01/2503		11/01/2504		11/01/2505		11/01/2506		11/01/2507		11/01/2508		11/01/2509		11/01/2510		11/01/2511		11/01/2512		11/01/2513		11/01/2514		11/01/2515		11/01/2516		11/01/2517		11/01/2518		11/01/2519		11/01/2520		11/01/2521		11/01/2522		11/01/2523		11/01/2524		11/01/2525		11/01/2526		11/01/2527		11/01/2528		11/01/2529		11/01/2530		11/01/2531		11/01/2532		11/01/2533		11/01/2534		11/01/2535		11/01/2536		11/01/2537		11/01/2538		11/01/2539		11/01/2540		11/01/2541		11/01/2542		11/01/2543		11/01/2544		11/01/2545		11/01/2546		11/01/2547		11/01/2548		11/01/2549		11/01/2550		11/01/2551		11/01/2552		11/01/2553		11/01/2554		11/01/2555		11/01/2556		11/01/2557		11/01/2558		11/01/2559		11/01/2560		11/01/2561		11/01/2562		11/01/2563		11/01/2564		11/01/2565		11/01/2566		11/01/2567		11/01/2568		11/01/2569		11/01/2570		11/01/2571		11/01/2572		11/01/2573		11/01/2574		11/01/2575		11/01/2576		11/01/2577		11/01/2578		11/01/2579		11/01/2580		11/01/2581		11/01/2582		11/01/2583		11/01/2584		11/01/2585		11/01/2586		11/01/2587		11/01/2588		11/01/2589		11/01/2590		11/01/2591		11/01/2592		11/01/2593		11/01/2594		11/01/2595		11/01/2596		11/01/2597		11/01/2598		11/01/2599		11/01/2600		11/01/2601		11/01/2602		11/01/2603		11/01/2604		11/01/2605		11/01/2606		11/01/2607		11/01/2608		11/01/2609		11/01/2610		11/01/2611		11/01/2612		11/01/2613		11/01/2614		11/01/2615		11/01/2616		11/01/2617		11/01/2618		11/01/2619		11/01/2620		11/01/2621		11/01/2622		11/01/2623		11/01/2624		11/01/2625		11/01/2626		11/01/2627		11/01/2628		11/01/2629		11/01/2630		11/01/2631		11/01/2632		11/01/2633		11/01/2634		11/01/2635		11/01/2636		11/01/2637		11/01/2638		11/01/2639		11/01/2640		11/01/2641		11/01/2642		11/01/2643		11/01/2644		11/01/2645		11/01/2646		11/01/2647		11/01/2648		11/01/2649		11/01/2650		11/01/2651		11/01/2652		11/01/2653		11/01/2654		11/01/2655		11/01/2656		11/01/2657		11/01/2658		11/01/2659		11/01/2660		11/01/2661		11/01/2662		11/01/2663		11/01/2664		11/01/2665		11/01/2666		11/01/2667		11/01/2668		11/01/2669		11/01/2670		11/01/2671		11/01/2672		11/01/2673		11/01/2674		11/01/2675		11/01/2676		11/01/2677		11/01/2678		11/01/2679		11/01/2680		11/01/2681		11/01/2682		11/01/2683		11/01/2684		11/01/2685		11/01/2686		11/01/2687		11/01/2688		11/01/2689		11/01/2690		11/01/2691			
--------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	------------	--	--	--

Name	Beginning of Year Factors			
	Thomas S Troup			
	Valuation Year 1999		Valuation Year 2000	
	Old Plan	New Plan	Old Plan	New Plan
1/1/1999	15,914.04	23,021.41	16,918.28	31,930.13
1/1/2000	16,900.19	24,416.40	17,984.39	33,696.46
1/1/2001	17,840.95	25,744.85	18,967.82	35,358.73
1/1/2002	18,687.32	27,009.91	19,808.06	36,923.07
1/1/2003	19,378.77	28,214.62	20,802.89	38,395.25
1/1/2004	20,213.08	29,361.85	21,661.54	39,780.71
1/1/2005	21,047.39	30,454.35	22,520.20	41,084.54
1/1/2006	21,881.70	31,494.72	23,378.85	42,311.56
1/1/2007	22,716.01	32,485.46	24,237.51	43,466.30
1/1/2008	23,550.32	33,428.93	25,096.16	44,553.01
1/1/2009	24,384.63	34,327.39	25,954.82	45,575.69
1/1/2010	25,218.94	35,182.99	26,813.47	46,538.13
1/1/2011	26,053.25	35,997.76	27,672.13	47,443.87
1/1/2012	26,887.56	36,773.66	28,530.78	48,296.25
1/1/2013	27,721.87	37,512.54	29,389.44	49,098.42
1/1/2014	28,556.18	38,216.17	29,460.99	49,171.96
2/1/2014	28,625.70	38,278.10		
Valuation Year 2001				
	Old Plan	New Plan	Old Plan	New Plan
			17,961.99	30,696.07
			19,040.95	32,248.51
			19,985.40	33,715.84
			21,093.13	35,102.73
			22,073.37	36,413.60
			22,948.35	37,652.60
			23,823.33	38,823.68
			24,698.31	39,930.56
			25,573.29	40,976.76
			26,448.27	41,965.60
			27,323.25	42,900.24
			28,198.23	43,783.64
			29,073.21	44,618.61
			29,948.19	45,407.81
			30,021.10	45,478.87
Valuation Year 2002				
	Old Plan	New Plan	Old Plan	New Plan
			19,295.77	29,350.74
			20,643.39	30,798.29
			22,188.02	32,172.72
			23,638.90	33,477.72
			25,018.24	34,716.80
			25,972.14	35,893.30
			26,926.04	37,010.36
			27,878.94	38,071.00
			28,833.85	39,078.07
			29,787.75	40,034.26
			30,741.65	40,942.16
			31,695.55	41,804.19
			32,649.45	42,622.68
			32,728.94	42,695.03

KRA00427

B0203

Name	Thomas S Troup	Valuation Year 2003		Valuation Year 2004		Valuation Year 2005		Valuation Year 2006	
		Old Plan	New Plan	Old Plan	New Plan	Old Plan	New Plan	Old Plan	New Plan
1/1/1989									
1/1/2000									
1/1/2001									
1/1/2002									
1/1/2003		20,589.63	28,606.42						
1/1/2004		22,132.55	29,887.92	22,093.81	31,153.28	23,809.57	30,798.59	25,865.81	31,087.15
1/1/2005		23,581.78	31,109.21	23,523.80	32,419.64	25,527.02	32,012.34	27,645.74	32,289.68
1/1/2006		24,959.51	32,273.12	24,880.91	33,623.86	26,844.30	33,169.84	29,483.26	33,438.44
1/1/2007		25,911.86	33,382.34	25,811.23	34,768.99	28,186.14	34,273.69	31,399.46	34,535.84
1/1/2008		26,863.55	34,439.45	26,739.49	35,857.93	29,573.63	35,326.38	32,973.07	35,594.18
1/1/2009		27,815.23	35,446.89	27,686.78	36,893.43	30,585.48	36,330.29	34,063.90	36,585.65
1/1/2010		28,766.92	36,407.00	28,634.07	37,878.13	31,597.33	37,287.66	35,154.74	37,542.35
1/1/2011		29,718.61	37,322.00	29,581.37	38,814.51	32,609.18	38,200.66	36,245.58	38,456.27
1/1/2012		30,670.29	38,194.00	30,528.66	39,704.95	33,621.02	39,071.35	37,336.41	39,329.34
1/1/2013		31,621.98	39,025.04	31,475.95	40,551.69	34,632.87	39,901.68	37,427.32	39,405.00
1/1/2014		32,573.67	39,817.03	32,423.24	41,356.88				
2/1/2014		32,652.87	39,886.34	32,502.18	41,427.76	34,717.20	39,974.08		

KRA00428

B0204

[illegible]

KRA00429

B0205



Name	Beginning of Year Factors				Maurice Ward			
	Valuation Year 1999		Valuation Year 2000		Valuation Year 2001		Valuation Year 2002	
	Old Plan	New Plan	Old Plan	New Plan	Old Plan	New Plan	Old Plan	New Plan
1/1/1999	17,996.83	23,014.11						
1/1/2000	19,591.90	24,818.56						
1/1/2001	21,166.63	26,693.15						
1/1/2002	22,220.50	28,478.29						
1/1/2003	23,391.84	30,178.27						
1/1/2004	24,497.95	31,797.14						
1/1/2005	25,604.06	33,338.78						
1/1/2006	26,710.18	34,929.20						
1/1/2007	27,816.29	36,443.75						
1/1/2008	28,922.40	37,886.03						
1/1/2009	30,028.51	39,259.51						
1/1/2010	31,134.62	40,567.46						
1/1/2011	32,240.74	41,813.01						
1/1/2012	33,346.85	42,999.13						
1/1/2013	34,452.96	44,128.66						
1/1/2014	35,559.07	45,204.30						
1/1/2015	36,665.18	46,228.63						
1/1/2016	37,771.30	47,204.08						
1/1/2017	38,877.41	48,101.31						
1/1/2018	39,983.52	49,018.77						
1/1/2019	41,089.63	49,429.76						
1/1/2020	42,195.75	50,046.84						
9/1/2020	42,933.15	50,458.26						

KRA00430

B0206

Name	Maurice Ward	Valuation Year		Valuation Year		Valuation Year		Valuation Year	
		2003		2004		2005		2006	
		Old Plan	New Plan	Old Plan	New Plan	Old Plan	New Plan	Old Plan	New Plan
1/1/1999									
1/1/2000									
1/1/2001									
1/1/2002									
1/1/2003		25,155.82	30,623.22	27,257.97	34,331.45				
1/1/2004		27,082.86	32,465.64	29,395.57	36,200.13	29,508.22	33,749.29	32,081.12	34,205.40
1/1/2005		29,029.53	34,221.49	31,196.60	38,125.19	31,433.73	35,624.05	34,517.50	36,091.73
1/1/2006		30,623.82	36,034.29	32,798.68	39,955.80	33,169.11	37,411.92	36,926.22	37,893.73
1/1/2007		32,003.36	37,761.92	34,309.65	41,696.58	34,823.20	39,116.92	39,199.54	39,615.16
1/1/2008		33,275.97	39,408.38	35,621.80	43,351.94	36,288.28	40,742.90	41,398.10	41,259.64
1/1/2009		34,548.58	40,977.48	36,933.94	44,926.08	37,624.97	42,293.53	42,868.84	42,830.59
1/1/2010		35,821.19	42,472.86	38,246.08	46,422.98	38,961.66	43,772.28	44,339.58	44,331.31
1/1/2011		37,093.80	43,897.98	39,558.23	47,846.43	40,298.36	45,182.50	45,810.32	45,764.93
1/1/2012		38,366.41	45,256.15	40,870.37	49,200.03	41,635.05	46,527.35	47,281.06	47,134.46
1/1/2013		39,639.02	46,550.50	42,182.51	50,487.22	42,971.74	47,809.88	48,751.60	48,442.76
1/1/2014		40,911.63	47,784.04	43,494.66	51,711.24	44,308.44	49,032.97	50,222.54	49,692.57
1/1/2015		42,184.24	48,959.62	44,806.80	52,875.21	45,645.13	50,199.36	51,693.28	50,845.79
1/1/2016		43,456.85	50,079.97	46,118.94	53,944.31	46,981.82	51,273.76	53,164.02	51,723.14
1/1/2017		44,729.46	51,111.27	47,431.08	54,753.95	48,318.52	52,089.75	54,634.76	52,561.26
1/1/2018		46,002.07	51,893.99	48,743.23	55,523.87	49,655.21	52,867.92	56,105.50	53,361.92
1/1/2019		47,274.68	52,639.95	50,055.37	56,256.01	50,991.90	53,610.02	57,085.99	53,892.00
1/1/2020		48,547.29	53,350.85	50,930.13	56,743.74	51,883.03			
9/1/2020		49,395.70	53,823.48						

KRA00431

B0207

Record Year	11/2020	11/2021	11/2022	11/2023	11/2024	11/2025	11/2026	11/2027	11/2028	11/2029	11/2030	11/2031	11/2032	11/2033	11/2034	11/2035	11/2036	11/2037	11/2038	11/2039	11/2040	11/2041	11/2042	11/2043	11/2044	11/2045	11/2046	11/2047	11/2048	11/2049	11/2050	11/2051	11/2052	11/2053	11/2054	11/2055	11/2056	11/2057	11/2058	11/2059	11/2060	11/2061	11/2062	11/2063	11/2064	11/2065	11/2066	11/2067	11/2068	11/2069	11/2070	11/2071	11/2072	11/2073	11/2074	11/2075	11/2076	11/2077	11/2078	11/2079	11/2080	11/2081	11/2082	11/2083	11/2084	11/2085	11/2086	11/2087	11/2088	11/2089	11/2090	11/2091	11/2092	11/2093	11/2094	11/2095	11/2096	11/2097	11/2098	11/2099	11/2100	11/2101	11/2102	11/2103	11/2104	11/2105	11/2106	11/2107	11/2108	11/2109	11/2110	11/2111	11/2112	11/2113	11/2114	11/2115	11/2116	11/2117	11/2118	11/2119	11/2120	11/2121	11/2122	11/2123	11/2124	11/2125	11/2126	11/2127	11/2128	11/2129	11/2130	11/2131	11/2132	11/2133	11/2134	11/2135	11/2136	11/2137	11/2138	11/2139	11/2140	11/2141	11/2142	11/2143	11/2144	11/2145	11/2146	11/2147	11/2148	11/2149	11/2150	11/2151	11/2152	11/2153	11/2154	11/2155	11/2156	11/2157	11/2158	11/2159	11/2160	11/2161	11/2162	11/2163	11/2164	11/2165	11/2166	11/2167	11/2168	11/2169	11/2170	11/2171	11/2172	11/2173	11/2174	11/2175	11/2176	11/2177	11/2178	11/2179	11/2180	11/2181	11/2182	11/2183	11/2184	11/2185	11/2186	11/2187	11/2188	11/2189	11/2190	11/2191	11/2192	11/2193	11/2194	11/2195	11/2196	11/2197	11/2198	11/2199	11/2200	11/2201	11/2202	11/2203	11/2204	11/2205	11/2206	11/2207	11/2208	11/2209	11/2210	11/2211	11/2212	11/2213	11/2214	11/2215	11/2216	11/2217	11/2218	11/2219	11/2220	11/2221	11/2222	11/2223	11/2224	11/2225	11/2226	11/2227	11/2228	11/2229	11/2230	11/2231	11/2232	11/2233	11/2234	11/2235	11/2236	11/2237	11/2238	11/2239	11/2240	11/2241	11/2242	11/2243	11/2244	11/2245	11/2246	11/2247	11/2248	11/2249	11/2250	11/2251	11/2252	11/2253	11/2254	11/2255	11/2256	11/2257	11/2258	11/2259	11/2260	11/2261	11/2262	11/2263	11/2264	11/2265	11/2266	11/2267	11/2268	11/2269	11/2270	11/2271	11/2272	11/2273	11/2274	11/2275	11/2276	11/2277	11/2278	11/2279	11/2280	11/2281	11/2282	11/2283	11/2284	11/2285	11/2286	11/2287	11/2288	11/2289	11/2290	11/2291	11/2292	11/2293	11/2294	11/2295	11/2296	11/2297	11/2298	11/2299	11/2300	11/2301	11/2302	11/2303	11/2304	11/2305	11/2306	11/2307	11/2308	11/2309	11/2310	11/2311	11/2312	11/2313	11/2314	11/2315	11/2316	11/2317	11/2318	11/2319	11/2320	11/2321	11/2322	11/2323	11/2324	11/2325	11/2326	11/2327	11/2328	11/2329	11/2330	11/2331	11/2332	11/2333	11/2334	11/2335	11/2336	11/2337	11/2338	11/2339	11/2340	11/2341	11/2342	11/2343	11/2344	11/2345	11/2346	11/2347	11/2348	11/2349	11/2350	11/2351	11/2352	11/2353	11/2354	11/2355	11/2356	11/2357	11/2358	11/2359	11/2360	11/2361	11/2362	11/2363	11/2364	11/2365	11/2366	11/2367	11/2368	11/2369	11/2370	11/2371	11/2372	11/2373	11/2374	11/2375	11/2376	11/2377	11/2378	11/2379	11/2380	11/2381	11/2382	11/2383	11/2384	11/2385	11/2386	11/2387	11/2388	11/2389	11/2390	11/2391	11/2392	11/2393	11/2394	11/2395	11/2396	11/2397	11/2398	11/2399	11/2400	11/2401	11/2402	11/2403	11/2404	11/2405	11/2406	11/2407	11/2408	11/2409	11/2410	11/2411	11/2412	11/2413	11/2414	11/2415	11/2416	11/2417	11/2418	11/2419	11/2420	11/2421	11/2422	11/2423	11/2424	11/2425	11/2426	11/2427	11/2428	11/2429	11/2430	11/2431	11/2432	11/2433	11/2434	11/2435	11/2436	11/2437	11/2438	11/2439	11/2440	11/2441	11/2442	11/2443	11/2444	11/2445	11/2446	11/2447	11/2448	11/2449	11/2450	11/2451	11/2452	11/2453	11/2454	11/2455	11/2456	11/2457	11/2458	11/2459	11/2460	11/2461	11/2462	11/2463	11/2464	11/2465	11/2466	11/2467	11/2468	11/2469	11/2470	11/2471	11/2472	11/2473	11/2474	11/2475	11/2476	11/2477	11/2478	11/2479	11/2480	11/2481	11/2482	11/2483	11/2484	11/2485	11/2486	11/2487	11/2488	11/2489	11/2490	11/2491	11/2492	11/2493	11/2494	11/2495	11/2496	11/2497	11/2498	11/2499	11/2500	11/2501	11/2502	11/2503	11/2504	11/2505	11/2506	11/2507	11/2508	11/2509	11/2510	11/2511	11/2512	11/2513	11/2514	11/2515	11/2516	11/2517	11/2518	11/2519	11/2520	11/2521	11/2522	11/2523	11/2524	11/2525	11/2526	11/2527	11/2528	11/2529	11/2530	11/2531	11/2532	11/2533	11/2534	11/2535	11/2536	11/2537	11/2538	11/2539	11/2540	11/2541	11/2542	11/2543	11/2544	11/2545	11/2546	11/2547	11/2548	11/2549	11/2550	11/2551	11/2552	11/2553	11/2554	11/2555	11/2556	11/2557	11/2558	11/2559	11/2560	11/2561	11/2562	11/2563	11/2564	11/2565	11/2566	11/2567	11/2568	11/2569	11/2570	11/2571	11/2572	11/2573	11/2574	11/2575	11/2576	11/2577	11/2578	11/2579	11/2580	11/2581	11/2582	11/2583	11/2584	11/2585	11/2586	11/2587	11/2588	11/2589	11/2590	11/2591	11/2592	11/2593	11/2594	11/2595	11/2596	11/2597	11/2598	11/2599	11/2600	11/2601	11/2602	11/2603	11/2604	11/2605	11/2606	11/2607	11/2608	11/2609	11/2610	11/2611	11/2612	11/2613	11/2614	11/2615	11/2616	11/2617	11/2618	11/2619	11/2620	11/2621	11/2622	11/2623	11/2624	11/2625	11/2626	11/2627	11/2628	11/2629	11/2630	11/2631	11/2632	11/2633	11/2634	11/2635	11/2636	11/2637	11/2638	11/2639	11/2640	11/2641	11/2642	11/2643	11/2644	11/2645	11/2646	11/2647	11/2648	11/2649	11/2650	11/2651	11/2652	11/2653	11/2654	11/2655	11/2656	11/2657	11/2658	11/2659	11/2660	11/2661	11/2662	11/2663	11/2664	11/2665	11/2666	11/2667	11/2668	11/2669	11/2670	11/2671	11/2672	11/2673	11/2674	11/2675	11/2676	11/2677	11/2678	11/2679	11/2680	11/2681	11/2682	11/2683	11/2684	11/2685	11/2686	11/2687	11/2688	11/2689	11/2690	11/2691	11/2692	11/2693	11/2694	11/2695	11/2696	11/2697	11/2698	11/2699	11/2700	11/2701	11/2702	11/2703	11/2704	11/2705	11/2706	11/2707	11/2708	11/2709	11/2710	11/2711	11/2712	11/2713	11/2714	11/2715	11/2716	11/2717	11/2718	11/2719	11/2720	11/2721	11/2722	11/2723	11/2724	11/2725	11/2726	11/2727	11/2728	11/2729	11/2730	11/2731	11/2732	11/2733	11/2734	11/2735	11/2736	11/2737	11/2738	11/2739	11/2740	11/2741	11/2742	11/2743	11/2744	11/2745	11/2746	11/2747	11/2748	11/2749	11/2750	11/2751	11/2752	11/2753	11/2754	11/2755	11/2756	11/2757	11/2758	11/2759	11/2760	11/2761	11/2762	11/2763	11/2764	11/2765	11/2766	11/2767	11/2768	11/2769	11/2770	11/2771	11/2772	11/2773	11/2774	11/2775	11/2776	11/2777	11/2778	11/2779	11/2780	11/2781	11/2782	11/2783	11/2784	11/2785	11/2786	11/2787	11/2788	11/2789	11/2790	11/2791	11/2792	11/2793	11/2794	11/2795	11/2796	11/2797	11/2798	11/2799	11/2800	11/2801	11/2802	11/2803	11/2804	11/2805	11/2806	11/2807	11/2808	11/2809	11/2810	11/2811	11/2812	11/2813	11/2814	11/2815	11/2816	11/2817	11/2818	11/2819	11/2820	11/2821	11/2822	11/2823	11/2824	11/2825	11/2826	11/2827	11/2828	11/2829	11/2830	11/2831	11/2832	11/2833	11/2834	11/2835	11/2836	11/2837	11/2838	11/2839	11/2840	11/2841	11/2842	11/2843	11/2844	11/2845	11/2846	11/2847	11/2848	11/2849	11/2850	11/2851	11/2852	11/2853	11/2854	11/2855	11/2856	11/2857	11/2858	11/2859	11/2860	11/2861	11/2862	11/2863	11/2864	11/2865	11/2866	11/2867	11/2868	11/2869	11/2870	11/2871	11/2872	11/2873	11/2874	11/2875	11/2876	11/2877	11/2878	11/2879	11/2880	11/2881	11/2882	11/2883	11/2884	11/2885	11/2886	11/2887	11/2888	11/2889	11/2890	11/2891	11/2892	11/2893	11/2894	11/2895	11/2896	11/2897	11/2898	11/2899	11/2900	11/2901	11/2902	11/2903	11/2904	11/2905	11/2906	11/2907	11/2908	11/2909	11/2910	11/2911	11/2912	11/2913	11/2914	11/2915	11/2916	11/2917	11/2918	11/2919	11/2920	11/2921	11/2922	11/2923	11/2924	11/2925	11/2926	11/2927	11/2928	11/2929	11/2930	11/2931	11/2932	11/2933	11/2934	11/2935	11/2936	11/2937	11/2938	11/2939	11/2940	11/2941	11/2942	11/2943	11/2944	11/2945	11/2946	11/2947	11/2948	11/2949	11/2950	11/2951	11/2952	11/2953	11/2954	11/2955	11/2956	11/2957	11/2958	11/2959	11/2960	11/2961	11/2962	11/2963	11/2964	11/2965	11/2966	11/2967	11/2968	11/2969	11/2970	11/2971	11/2972	11/2973	11/2974	11/2975	11/2976	11/2977	11/2978	11/2979	11/2980	11/2981	11/2982	11/2983	11/2984	11/2985	11/2986	11/2987	11/2988	11/2989	11/2990	11/2991	11/2992	11/2993	11/2994	11/2995	11/2996	11/2997	11/2998	11/2999	11/3000	11/3001	11/3002	11/3003	11/3004	11/3005	11/3006	11/3007	11/3008	11/3009	11/3010	11/3011	11/3012	11/3013	11/3014	11/3015	11/3016	11/3017	11/3018	11/3019	11/3020	11/3021	11/3022	11/3023	11/3024	11/3025	11/3026	11/3027	11/3028	11/3029	11/3030	11/3031	11/3032	11/3033	11/3034	11/3035	11/3036	11/3037	11/3038	11/3039	11/3040	11/3041	11/3042	11/3043	11/3044	11/3045	11/3046	11/3047	11/3048	11/3049	11/3050
----------------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------

Name	Beginning of Year Factors							
	Jerome Charles		Valuation Year 2000		Valuation Year 2001		Valuation Year 2002	
	Old Plan	New Plan	Old Plan	New Plan	Old Plan	New Plan	Old Plan	New Plan
1/1/1999	17,300.82	25,425.91						
1/1/2000	18,140.62	26,819.99						
1/1/2001	19,260.17	28,147.56			20,595.50	33,865.04		
1/1/2002	20,098.82	29,411.79	20,944.20	39,094.10	22,613.00	35,856.08	22,760.94	32,523.04
1/1/2003	21,195.04	30,615.70	22,372.72	40,785.95	24,988.12	37,737.97	25,297.27	34,261.00
1/1/2004	22,104.23	31,762.18	23,639.48	42,378.13	27,276.26	39,516.70	27,758.88	35,911.17
1/1/2005	23,013.42	32,853.96	24,611.82	43,876.51	29,344.78	41,197.92	30,016.13	37,477.99
1/1/2006	23,922.61	33,893.65	25,584.16	45,286.62	30,504.10	42,786.97	31,376.44	38,965.66
1/1/2007	24,831.80	34,883.73	26,556.50	46,613.65	31,663.43	44,288.90	32,568.92	40,378.19
1/1/2008	25,740.99	35,826.58	27,528.84	47,862.51	32,822.75	45,708.50	33,761.39	41,719.36
1/1/2009	26,650.17	36,724.45	28,501.17	49,037.80	33,982.07	47,050.28	34,953.87	42,992.79
1/1/2010	27,559.36	37,579.48	29,473.51	50,143.84	35,141.40	48,318.50	36,146.35	44,201.90
1/1/2011	28,468.55	38,393.72	30,445.85	51,184.73	36,300.72	49,517.20	37,338.82	45,349.93
1/1/2012	29,377.74	39,169.11	31,418.19	52,164.29	37,460.04	50,650.18	38,531.30	46,439.97
1/1/2013	30,286.93	39,907.50	32,390.53	53,086.15	38,619.36	51,721.06	39,723.78	47,474.94
1/1/2014	31,196.12	40,610.67	33,362.86	53,953.70	39,778.69	52,733.22	40,916.25	48,457.64
1/1/2014	31,953.78	41,151.88	34,173.15	54,620.37	40,744.79	53,509.38	41,909.98	49,211.80

Name	Jerome Charles	Valuation Year 2003		Valuation Year 2004		Valuation Year 2005		Valuation Year 2006	
		Old Plan	New Plan	Old Plan	New Plan	Old Plan	New Plan	Old Plan	New Plan
1/1/1999									
1/1/2000									
1/1/2001									
1/1/2002									
1/1/2003		25,544.13	31,734.28						
1/1/2004		28,274.77	33,357.04	28,169.86	34,826.41				
1/1/2005		30,820.24	34,903.55	30,601.78	36,414.44	30,881.10	34,519.60	33,045.48	34,973.03
1/1/2006		32,490.94	36,377.40	32,150.31	37,924.54	32,731.03	36,060.31	35,100.54	36,402.51
1/1/2007		34,014.99	37,782.01	33,543.55	39,360.54	34,447.74	37,529.61	36,914.32	37,768.07
1/1/2008		35,260.41	39,120.62	34,649.53	40,726.09	35,899.26	38,930.81		
1/1/2009		36,505.84	40,396.34	35,873.38	42,024.63	37,490.71	40,267.07	38,891.93	39,072.58
1/1/2010		37,751.26	41,612.12	37,097.23	43,259.45	38,769.74	41,541.40	40,581.02	40,318.77
1/1/2011		38,996.68	42,770.78	38,321.07	44,433.68	40,048.76	42,756.66	41,919.79	41,509.25
1/1/2012		40,242.10	43,875.00	39,544.92	45,550.29	41,327.78	43,915.61	43,258.57	42,646.50
1/1/2013		41,487.53	44,927.34	40,768.77	46,612.11	42,606.80	45,020.83	44,597.35	43,732.91
1/1/2014		42,732.95	45,930.23	41,992.61	47,621.84	43,885.83	46,074.84	45,916.13	44,770.75
1/1/2014		43,770.80	46,700.43	43,012.48	48,396.79	44,951.68	46,894.18	47,051.77	45,568.23

KRA00434

B0210

Report Year	11/07/07	11/07/06	11/07/05	11/07/04	11/07/03	11/07/02	11/07/01	11/06/99	11/06/98	11/06/97	11/06/96	11/06/95	11/06/94	11/06/93	11/06/92	11/06/91	11/06/90	11/06/89	11/06/88	11/06/87	11/06/86	11/06/85	11/06/84	11/06/83	11/06/82	11/06/81	11/06/80	11/06/79	11/06/78	11/06/77	11/06/76	11/06/75	11/06/74	11/06/73	11/06/72	11/06/71	11/06/70	11/06/69	11/06/68	11/06/67	11/06/66	11/06/65	11/06/64	11/06/63	11/06/62	11/06/61	11/06/60	11/06/59	11/06/58	11/06/57	11/06/56	11/06/55	11/06/54	11/06/53	11/06/52	11/06/51	11/06/50	11/06/49	11/06/48	11/06/47	11/06/46	11/06/45	11/06/44	11/06/43	11/06/42	11/06/41	11/06/40	11/06/39	11/06/38	11/06/37	11/06/36	11/06/35	11/06/34	11/06/33	11/06/32	11/06/31	11/06/30	11/06/29	11/06/28	11/06/27	11/06/26	11/06/25	11/06/24	11/06/23	11/06/22	11/06/21	11/06/20	11/06/19	11/06/18	11/06/17	11/06/16	11/06/15	11/06/14	11/06/13	11/06/12	11/06/11	11/06/10	11/06/09	11/06/08	11/06/07	11/06/06	11/06/05	11/06/04	11/06/03	11/06/02	11/06/01	11/06/00	11/05/99	11/05/98	11/05/97	11/05/96	11/05/95	11/05/94	11/05/93	11/05/92	11/05/91	11/05/90	11/05/89	11/05/88	11/05/87	11/05/86	11/05/85	11/05/84	11/05/83	11/05/82	11/05/81	11/05/80	11/05/79	11/05/78	11/05/77	11/05/76	11/05/75	11/05/74	11/05/73	11/05/72	11/05/71	11/05/70	11/05/69	11/05/68	11/05/67	11/05/66	11/05/65	11/05/64	11/05/63	11/05/62	11/05/61	11/05/60	11/05/59	11/05/58	11/05/57	11/05/56	11/05/55	11/05/54	11/05/53	11/05/52	11/05/51	11/05/50	11/05/49	11/05/48	11/05/47	11/05/46	11/05/45	11/05/44	11/05/43	11/05/42	11/05/41	11/05/40	11/05/39	11/05/38	11/05/37	11/05/36	11/05/35	11/05/34	11/05/33	11/05/32	11/05/31	11/05/30	11/05/29	11/05/28	11/05/27	11/05/26	11/05/25	11/05/24	11/05/23	11/05/22	11/05/21	11/05/20	11/05/19	11/05/18	11/05/17	11/05/16	11/05/15	11/05/14	11/05/13	11/05/12	11/05/11	11/05/10	11/05/09	11/05/08	11/05/07	11/05/06	11/05/05	11/05/04	11/05/03	11/05/02	11/05/01	11/05/00	11/04/99	11/04/98	11/04/97	11/04/96	11/04/95	11/04/94	11/04/93	11/04/92	11/04/91	11/04/90	11/04/89	11/04/88	11/04/87	11/04/86	11/04/85	11/04/84	11/04/83	11/04/82	11/04/81	11/04/80	11/04/79	11/04/78	11/04/77	11/04/76	11/04/75	11/04/74	11/04/73	11/04/72	11/04/71	11/04/70	11/04/69	11/04/68	11/04/67	11/04/66	11/04/65	11/04/64	11/04/63	11/04/62	11/04/61	11/04/60	11/04/59	11/04/58	11/04/57	11/04/56	11/04/55	11/04/54	11/04/53	11/04/52	11/04/51	11/04/50	11/04/49	11/04/48	11/04/47	11/04/46	11/04/45	11/04/44	11/04/43	11/04/42	11/04/41	11/04/40	11/04/39	11/04/38	11/04/37	11/04/36	11/04/35	11/04/34	11/04/33	11/04/32	11/04/31	11/04/30	11/04/29	11/04/28	11/04/27	11/04/26	11/04/25	11/04/24	11/04/23	11/04/22	11/04/21	11/04/20	11/04/19	11/04/18	11/04/17	11/04/16	11/04/15	11/04/14	11/04/13	11/04/12	11/04/11	11/04/10	11/04/09	11/04/08	11/04/07	11/04/06	11/04/05	11/04/04	11/04/03	11/04/02	11/04/01	11/04/00	11/03/99	11/03/98	11/03/97	11/03/96	11/03/95	11/03/94	11/03/93	11/03/92	11/03/91	11/03/90	11/03/89	11/03/88	11/03/87	11/03/86	11/03/85	11/03/84	11/03/83	11/03/82	11/03/81	11/03/80	11/03/79	11/03/78	11/03/77	11/03/76	11/03/75	11/03/74	11/03/73	11/03/72	11/03/71	11/03/70	11/03/69	11/03/68	11/03/67	11/03/66	11/03/65	11/03/64	11/03/63	11/03/62	11/03/61	11/03/60	11/03/59	11/03/58	11/03/57	11/03/56	11/03/55	11/03/54	11/03/53	11/03/52	11/03/51	11/03/50	11/03/49	11/03/48	11/03/47	11/03/46	11/03/45	11/03/44	11/03/43	11/03/42	11/03/41	11/03/40	11/03/39	11/03/38	11/03/37	11/03/36	11/03/35	11/03/34	11/03/33	11/03/32	11/03/31	11/03/30	11/03/29	11/03/28	11/03/27	11/03/26	11/03/25	11/03/24	11/03/23	11/03/22	11/03/21	11/03/20	11/03/19	11/03/18	11/03/17	11/03/16	11/03/15	11/03/14	11/03/13	11/03/12	11/03/11	11/03/10	11/03/09	11/03/08	11/03/07	11/03/06	11/03/05	11/03/04	11/03/03	11/03/02	11/03/01	11/03/00	11/02/99	11/02/98	11/02/97	11/02/96	11/02/95	11/02/94	11/02/93	11/02/92	11/02/91	11/02/90	11/02/89	11/02/88	11/02/87	11/02/86	11/02/85	11/02/84	11/02/83	11/02/82	11/02/81	11/02/80	11/02/79	11/02/78	11/02/77	11/02/76	11/02/75	11/02/74	11/02/73	11/02/72	11/02/71	11/02/70	11/02/69	11/02/68	11/02/67	11/02/66	11/02/65	11/02/64	11/02/63	11/02/62	11/02/61	11/02/60	11/02/59	11/02/58	11/02/57	11/02/56	11/02/55	11/02/54	11/02/53	11/02/52	11/02/51	11/02/50	11/02/49	11/02/48	11/02/47	11/02/46	11/02/45	11/02/44	11/02/43	11/02/42	11/02/41	11/02/40	11/02/39	11/02/38	11/02/37	11/02/36	11/02/35	11/02/34	11/02/33	11/02/32	11/02/31	11/02/30	11/02/29	11/02/28	11/02/27	11/02/26	11/02/25	11/02/24	11/02/23	11/02/22	11/02/21	11/02/20	11/02/19	11/02/18	11/02/17	11/02/16	11/02/15	11/02/14	11/02/13	11/02/12	11/02/11	11/02/10	11/02/09	11/02/08	11/02/07	11/02/06	11/02/05	11/02/04	11/02/03	11/02/02	11/02/01	11/02/00	11/01/99	11/01/98	11/01/97	11/01/96	11/01/95	11/01/94	11/01/93	11/01/92	11/01/91	11/01/90	11/01/89	11/01/88	11/01/87	11/01/86	11/01/85	11/01/84	11/01/83	11/01/82	11/01/81	11/01/80	11/01/79	11/01/78	11/01/77	11/01/76	11/01/75	11/01/74	11/01/73	11/01/72	11/01/71	11/01/70	11/01/69	11/01/68	11/01/67	11/01/66	11/01/65	11/01/64	11/01/63	11/01/62	11/01/61	11/01/60	11/01/59	11/01/58	11/01/57	11/01/56	11/01/55	11/01/54	11/01/53	11/01/52	11/01/51	11/01/50	11/01/49	11/01/48	11/01/47	11/01/46	11/01/45	11/01/44	11/01/43	11/01/42	11/01/41	11/01/40	11/01/39	11/01/38	11/01/37	11/01/36	11/01/35	11/01/34	11/01/33	11/01/32	11/01/31	11/01/30	11/01/29	11/01/28	11/01/27	11/01/26	11/01/25	11/01/24	11/01/23	11/01/22	11/01/21	11/01/20	11/01/19	11/01/18	11/01/17	11/01/16	11/01/15	11/01/14	11/01/13	11/01/12	11/01/11	11/01/10	11/01/09	11/01/08	11/01/07	11/01/06	11/01/05	11/01/04	11/01/03	11/01/02	11/01/01	11/01/00	11/00/99	11/00/98	11/00/97	11/00/96	11/00/95	11/00/94	11/00/93	11/00/92	11/00/91	11/00/90	11/00/89	11/00/88	11/00/87	11/00/86	11/00/85	11/00/84	11/00/83	11/00/82	11/00/81	11/00/80	11/00/79	11/00/78	11/00/77	11/00/76	11/00/75	11/00/74	11/00/73	11/00/72	11/00/71	11/00/70	11/00/69	11/00/68	11/00/67	11/00/66	11/00/65	11/00/64	11/00/63	11/00/62	11/00/61	11/00/60	11/00/59	11/00/58	11/00/57	11/00/56	11/00/55	11/00/54	11/00/53	11/00/52	11/00/51	11/00/50	11/00/49	11/00/48	11/00/47	11/00/46	11/00/45	11/00/44	11/00/43	11/00/42	11/00/41	11/00/40	11/00/39	11/00/38	11/00/37	11/00/36	11/00/35	11/00/34	11/00/33	11/00/32	11/00/31	11/00/30	11/00/29	11/00/28	11/00/27	11/00/26	11/00/25	11/00/24	11/00/23	11/00/22	11/00/21	11/00/20	11/00/19	11/00/18	11/00/17	11/00/16	11/00/15	11/00/14	11/00/13	11/00/12	11/00/11	11/00/10	11/00/09	11/00/08	11/00/07	11/00/06	11/00/05	11/00/04	11/00/03	11/00/02	11/00/01	11/00/00	10/99/99	10/99/98	10/99/97	10/99/96	10/99/95	10/99/94	10/99/93	10/99/92	10/99/91	10/99/90	10/99/89	10/99/88	10/99/87	10/99/86	10/99/85	10/99/84	10/99/83	10/99/82	10/99/81	10/99/80	10/99/79	10/99/78	10/99/77	10/99/76	10/99/75	10/99/74	10/99/73	10/99/72	10/99/71	10/99/70	10/99/69	10/99/68	10/99/67	10/99/66	10/99/65	10/99/64	10/99/63	10/99/62	10/99/61	10/99/60	10/99/59	10/99/58	10/99/57	10/99/56	10/99/55	10/99/54	10/99/53	10/99/52	10/99/51	10/99/50	10/99/49	10/99/48	10/99/47	10/99/46	10/99/45	10/99/44	10/99/43	10/99/42	10/99/41	10/99/40	10/99/39	10/99/38	10/99/37	10/99/36	10/99/35	10/99/34	10/99/33	10/99/32	10/99/31	10/99/30	10/99/29	10/99/28	10/99/27	10/99/26	10/99/25	10/99/24	10/99/23	10/99/22	10/99/21	10/99/20	10/99/19	10/99/18	10/99/17	10/99/16	10/99/15	10/99/14	10/99/13	10/99/12	10/99/11	10/99/10	10/99/09	10/99/08	10/99/07	10/99/06	10/99/05	10/99/04	10/99/03	10/99/02	10/99/01	10/99/00	10/98/99	10/98/98	10/98/97	10/98/96	10/98/95	10/98/94	10/98/93	10/98/92	10/98/91	10/98/90	10/98/89	10/98/88	10/98/87	10/98/86	10/98/85	10/98/84	10/98/83	10/98/82	10/98/81	10/98/80	10/98/79	10/98/78	10/98/77	10/98/76	10/98/75	10/98/74	10/98/73	10/98/72	10/98/71	10/98/70	10/98/69	10/98/68	10/98/67	10/98/66	10/98/65	10/98/64	10/98/63	10/98/62	10/98/61	10/98/60	10/98/59	10/98/58	10/98/57	10/98/56	10/98/55	10/98/54	10/98/53	10/98/52	10/98/51	10/98/50	10/98/49	10/98/48	10/98/47	10/98/46	10/98/45	10/98/44	10/98/43	10/98/42	10/98/41	10/98/40	10/98/39	10/98/38	10/98/37	10/98/36	10/98/35	10/98/34	10/98/33	10/98/32	10/98/31	10/98/30	10/98/29	10/98/28	10/98/27	10/98/26	10/98/25	10/98/24	10/98/23	10/98/22	10/98/21	10/98/20	10/98/19	10/98/18	10/98/17	10/98/16	10/98/15	10/98/14	10/98/13	10/98/12	10/98/11	10/98/10	10/98/09	10/98/08	10/98/07	10/98/06	10/98/05	10/98/04	10/98/03	10/98/02	10/98/01	10/98/00	10/97/99	10/97/98	10/97/97	10/97/96	10/97/95	10/97/94	10/97/93	10/97/92	10/97/91	10/97/90	10/97/89	10/97/88	10/97/87	10/97/86	10/97/85	10/97/84	10/97/83	10/97/82	10/97/81	10/97/80	10/97/79	10/97/78	10/97/77	10/97/76	10/97/75	10/97/74	10/97/73	10/97/72	10/97/71	10/97/70	10/97/69	10/97/68	10/97/67	10/97/66	10/97/65	10/97/64	10/97/63	10/97/62	10/97/61	10/97/60	10/97/59	10/97/58	10/97/57	10/97/56	10/97/
----------------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	--------



KRA00436

Name	Joseph Fink	Valuation Year 2003		Valuation Year 2004		Valuation Year 2005		Valuation Year 2006	
		Old Plan	New Plan	Old Plan	New Plan	Old Plan	New Plan	Old Plan	New Plan
1/1/1999									
1/1/2000									
1/1/2001									
1/1/2002									
1/1/2003		18,037.46	22,024.34		24,803.58				
1/1/2004		19,749.33	23,537.03	19,843.89	24,449.92	21,720.22	24,770.99	23,830.51	25,305.63
1/1/2005		21,374.04	25,109.70	21,574.56	26,449.92	23,307.02	26,283.57	26,017.70	26,868.94
1/1/2006		22,681.28	26,608.48	22,999.16	28,015.48	24,914.41	27,726.05		26,362.36
1/1/2007		23,981.15	28,036.85	24,427.79	29,504.21	26,473.71	29,101.68	28,213.10	
1/1/2008		25,204.99	29,398.10	25,791.77	30,919.90	27,937.92	30,413.55	30,369.75	29,789.01
1/1/2009		26,428.82	30,695.40	27,044.10	32,266.13	29,231.63	31,664.61	32,412.13	31,151.88
1/1/2010		27,652.66	31,931.74	28,296.42	33,546.30	30,525.35	32,857.69	33,846.81	32,453.82
1/1/2011		28,876.49	33,110.00	29,548.75	34,763.65	31,819.06	33,995.48	35,281.08	33,697.55
1/1/2012		30,100.33	34,232.90	30,801.07	35,921.27	33,112.78	35,080.53	36,715.55	34,885.68
1/1/2013		31,324.16	35,303.04	32,053.40	37,022.08	34,406.49	36,115.29	38,150.04	36,020.69
1/1/2014		32,547.99	36,322.90	33,305.72	38,068.89	35,700.21	37,102.10	39,584.57	37,104.95
1/1/2015		33,771.83	37,294.84	34,558.05	39,064.32	36,993.92	38,043.17	41,018.99	38,140.74
1/1/2016		34,995.66	38,221.12	35,810.38	40,010.92	38,287.64	38,940.62	42,453.47	39,130.23
1/1/2017		36,219.50	39,103.88	37,062.70	40,911.06	39,581.36	39,796.48	43,887.84	40,075.47
1/1/2018		37,443.33	39,945.16	38,315.03	41,767.04			45,322.42	40,978.46
1/1/2019		38,667.17	40,746.92	39,567.35	42,581.01	40,675.07	40,612.67		
2/1/2019		38,769.15	40,817.12	39,671.71	42,652.74	40,982.88	40,683.95	45,441.96	41,056.74

KRA00437

B0213

[illegible]

KRA00438

B0214



Account		1/1/2004		1/1/2005		1/1/2006		1/1/2007		1/1/2008		1/1/2009		1/1/2010		1/1/2011		1/1/2012		1/1/2013		1/1/2014		1/1/2015		1/1/2016		1/1/2017		1/1/2018		1/1/2019		1/1/2020		1/1/2021		1/1/2022		1/1/2023		1/1/2024		1/1/2025		1/1/2026		1/1/2027		1/1/2028		1/1/2029		1/1/2030		1/1/2031		1/1/2032		1/1/2033		1/1/2034		1/1/2035		1/1/2036		1/1/2037		1/1/2038		1/1/2039		1/1/2040		1/1/2041		1/1/2042		1/1/2043		1/1/2044		1/1/2045		1/1/2046		1/1/2047		1/1/2048		1/1/2049		1/1/2050		1/1/2051		1/1/2052		1/1/2053		1/1/2054		1/1/2055		1/1/2056		1/1/2057		1/1/2058		1/1/2059		1/1/2060		1/1/2061		1/1/2062		1/1/2063		1/1/2064		1/1/2065		1/1/2066		1/1/2067		1/1/2068		1/1/2069		1/1/2070		1/1/2071		1/1/2072		1/1/2073		1/1/2074		1/1/2075		1/1/2076		1/1/2077		1/1/2078		1/1/2079		1/1/2080		1/1/2081		1/1/2082		1/1/2083		1/1/2084		1/1/2085		1/1/2086		1/1/2087		1/1/2088		1/1/2089		1/1/2090		1/1/2091		1/1/2092		1/1/2093		1/1/2094		1/1/2095		1/1/2096		1/1/2097		1/1/2098		1/1/2099		1/1/2100		1/1/2101		1/1/2102		1/1/2103		1/1/2104		1/1/2105		1/1/2106		1/1/2107		1/1/2108		1/1/2109		1/1/2110		1/1/2111		1/1/2112		1/1/2113		1/1/2114		1/1/2115		1/1/2116		1/1/2117		1/1/2118		1/1/2119		1/1/2120		1/1/2121		1/1/2122		1/1/2123		1/1/2124		1/1/2125		1/1/2126		1/1/2127		1/1/2128		1/1/2129		1/1/2130		1/1/2131		1/1/2132		1/1/2133		1/1/2134		1/1/2135		1/1/2136		1/1/2137		1/1/2138		1/1/2139		1/1/2140		1/1/2141		1/1/2142		1/1/2143		1/1/2144		1/1/2145		1/1/2146		1/1/2147		1/1/2148		1/1/2149		1/1/2150		1/1/2151		1/1/2152		1/1/2153		1/1/2154		1/1/2155		1/1/2156		1/1/2157		1/1/2158		1/1/2159		1/1/2160		1/1/2161		1/1/2162		1/1/2163		1/1/2164		1/1/2165		1/1/2166		1/1/2167		1/1/2168		1/1/2169		1/1/2170		1/1/2171		1/1/2172		1/1/2173		1/1/2174		1/1/2175		1/1/2176		1/1/2177		1/1/2178		1/1/2179		1/1/2180		1/1/2181		1/1/2182		1/1/2183		1/1/2184		1/1/2185		1/1/2186		1/1/2187		1/1/2188		1/1/2189		1/1/2190		1/1/2191		1/1/2192		1/1/2193		1/1/2194		1/1/2195		1/1/2196		1/1/2197		1/1/2198		1/1/2199		1/1/2200		1/1/2201		1/1/2202		1/1/2203		1/1/2204		1/1/2205		1/1/2206		1/1/2207		1/1/2208		1/1/2209		1/1/2210		1/1/2211		1/1/2212		1/1/2213		1/1/2214		1/1/2215		1/1/2216		1/1/2217		1/1/2218		1/1/2219		1/1/2220		1/1/2221		1/1/2222		1/1/2223		1/1/2224		1/1/2225		1/1/2226		1/1/2227		1/1/2228		1/1/2229		1/1/2230		1/1/2231		1/1/2232		1/1/2233		1/1/2234		1/1/2235		1/1/2236		1/1/2237		1/1/2238		1/1/2239		1/1/2240		1/1/2241		1/1/2242		1/1/2243		1/1/2244		1/1/2245		1/1/2246		1/1/2247		1/1/2248		1/1/2249		1/1/2250		1/1/2251		1/1/2252		1/1/2253		1/1/2254		1/1/2255		1/1/2256		1/1/2257		1/1/2258		1/1/2259		1/1/2260		1/1/2261		1/1/2262		1/1/2263		1/1/2264		1/1/2265		1/1/2266		1/1/2267		1/1/2268		1/1/2269		1/1/2270		1/1/2271		1/1/2272		1/1/2273		1/1/2274		1/1/2275		1/1/2276		1/1/2277		1/1/2278		1/1/2279		1/1/2280		1/1/2281		1/1/2282		1/1/2283		1/1/2284		1/1/2285		1/1/2286		1/1/2287		1/1/2288		1/1/2289		1/1/2290		1/1/2291		1/1/2292		1/1/2293		1/1/2294		1/1/2295		1/1/2296		1/1/2297		1/1/2298		1/1/2299		1/1/2300		1/1/2301		1/1/2302		1/1/2303		1/1/2304		1/1/2305		1/1/2306		1/1/2307		1/1/2308		1/1/2309		1/1/2310		1/1/2311		1/1/2312		1/1/2313		1/1/2314		1/1/2315		1/1/2316		1/1/2317		1/1/2318		1/1/2319		1/1/2320		1/1/2321		1/1/2322		1/1/2323		1/1/2324		1/1/2325		1/1/2326		1/1/2327		1/1/2328		1/1/2329		1/1/2330		1/1/2331		1/1/2332		1/1/2333		1/1/2334		1/1/2335		1/1/2336		1/1/2337		1/1/2338		1/1/2339		1/1/2340		1/1/2341		1/1/2342		1/1/2343		1/1/2344		1/1/2345		1/1/2346		1/1/2347		1/1/2348		1/1/2349		1/1/2350		1/1/2351		1/1/2352		1/1/2353		1/1/2354		1/1/2355		1/1/2356		1/1/2357		1/1/2358		1/1/2359		1/1/2360		1/1/2361		1/1/2362		1/1/2363		1/1/2364		1/1/2365		1/1/2366		1/1/2367		1/1/2368		1/1/2369		1/1/2370		1/1/2371		1/1/2372		1/1/2373		1/1/2374		1/1/2375		1/1/2376		1/1/2377		1/1/2378		1/1/2379		1/1/2380		1/1/2381		1/1/2382		1/1/2383		1/1/2384		1/1/2385		1/1/2386		1/1/2387		1/1/2388		1/1/2389		1/1/2390		1/1/2391		1/1/2392		1/1/2393		1/1/2394		1/1/2395		1/1/2396		1/1/2397		1/1/2398		1/1/2399		1/1/2400		1/1/2401		1/1/2402		1/1/2403		1/1/2404		1/1/2405		1/1/2406		1/1/2407		1/1/2408		1/1/2409		1/1/2410		1/1/2411		1/1/2412		1/1/2413		1/1/2414		1/1/2415		1/1/2416		1/1/2417		1/1/2418		1/1/2419		1/1/2420		1/1/2421		1/1/2422		1/1/2423		1/1/2424		1/1/2425		1/1/2426		1/1/2427		1/1/2428		1/1/2429		1/1/2430		1/1/2431		1/1/2432		1/1/2433		1/1/2434		1/1/2435		1/1/2436		1/1/2437		1/1/2438		1/1/2439		1/1/2440		1/1/2441		1/1/2442		1/1/2443		1/1/2444		1/1/2445		1/1/2446		1/1/2447		1/1/2448		1/1/2449		1/1/2450		1/1/2451		1/1/2452		1/1/2453		1/1/2454		1/1/2455		1/1/2456		1/1/2457		1/1/2458		1/1/2459		1/1/2460		1/1/2461		1/1/2462		1/1/2463		1/1/2464		1/1/2465		1/1/2466		1/1/2467		1/1/2468		1/1/2469		1/1/2470		1/1/2471		1/1/2472		1/1/2473		1/1/2474		1/1/2475		1/1/2476		1/1/2477		1/1/2478		1/1/2479		1/1/2480		1/1/2481		1/1/2482		1/1/2483		1/1/2484		1/1/2485		1/1/2486		1/1/2487		1/1/2488		1/1/2489		1/1/2490		1/1/2491		1/1/2492		1/1/2493		1/1/2494		1/1/2495		1/1/2496		1/1/2497		1/1/2498		1/1/2499		1/1/2500		1/1/2501		1/1/2502		1/1/2503		1/1/2504		1/1/2505		1/1/2506		1/1/2507		1/1/2508		1/1/2509		1/1/2510		1/1/2511		1/1/2512		1/1/2513		1/1/2514		1/1/2515		1/1/2516		1/1/2517		1/1/2518		1/1/2519		1/1/2520		1/1/2521		1/1/2522		1/1/2523		1/1/2524		1/1/2525		1/1/2526		1/1/2527		1/1/2528		1/1/2529		1/1/2530		1/1/2531		1/1/2532		1/1/2533		1/1/2534		1/1/2535		1/1/2536		1/1/2537		1/1/2538		1/1/2539		1/1/2540		1/1/2541		1/1/2542		1/1/2543		1/1/2544		1/1/2545		1/1/2546		1/1/2547		1/1/2548		1/1/2549		1/1/2550		1/1/2551		1/1/2552		1/1/2553		1/1/2554		1/1/2555		1/1/2556		1/1/2557		1/1/2558		1/1/2559		1/1/2560		1/1/2561		1/1/2562		1/1/2563		1/1/2564		1/1/2565		1/1/2566		1/1/2567		1/1/2568		1/1/2569		1/1/2570		1/1/2571		1/1/2572		1/1/2573		1/1/2574		1/1/2575		1/1/2576		1/1/2577		1/1/2578		1/1/2579		1/1/2580		1/1/2581		1/1/2582		1/1/2583		1/1/2584		1/1/2585		1/1/2586		1/1/2587		1/1/2588		1/1/2589		1/1/2590		1/1/2591		1/1/2592		1/1/2593		1/1/2594		1/1/2595		1/1/2596		1/1/2597		1/1/2598		1/1/2599		1/1/2600		1/1/2601		1/1/2602		1/1/2603		1/1/2604		1/1/2605		1/1/2606		1/1/2607		1/1/2608		1/1/2609		1/1/2610		1/1/2611		1/1/2612		1/1/2613		1/1/2614		1/1/2615		1/1/2616		1/1/2617		1/1/2618		1/1/2619		1/1/2620		1/1/2621		1/1/2622		1/1/2623		1/1/2624		1/1/2625		1/1/2626		1/1/2627		1/1/2628		1/1/2629		1/1/2630		1/1/2631		1/1/2632		1/1/2633		1/1/2634		1/1/2635		1/1/2636		1/1/2637		1/1/2638		1/1/2639		1/1/2640		1/1/2641		1/1/2642		1/1/2643		1/1/2644		1/1/2645		1/1/2646		1/1/2647		1/1/2648		1/1/2649		1/1/2650		1/1/2651		1/1/2652		1/1/2653		1/1/2654		1/1/2655		1/1/2656		1/1/2657		1/1/2658		1/1/2659		1/1/2660		1/1/2661		1/1/2662		1/1/2663		1/1/2664		1/1/2665		1/1/2666		1/1/2667		1/1/2668		1/1/2669		1/1/2670		1/1/2671		1/1/2672		1/1/2673		1/1/2674		1/1/2675		1/1/2676		1/1/2677		1/1/2678		1/1/2679		1/1/2680		1/1/2681		1/1/2682		1/1/2683		1/1/2684		1/1/2685		1/1/2686		1/1/2687		1/1/2688		1/1/2689		1/1/2690		1/1/2691		1/1/2692		1/1/2693		1/1/2694		1/1/2695		1/1/2696		1/1/2697		1/1/2698		1/1/2699		1/1/2700		1/1/2701		1/1/2702		1/1/2703		1/1/2704		1/1/2705		1/1/2706		1/1/2707		1/1/2708		1/1/2709		1/1/2710		1/1/2711		1/1/2712		1/1/2713		1/1/2714		1/1/2715		1/1/2716		1/1/2717		1/1/2718		1/1/2719		1/1/2720		1/1/2721		1/1/2722		1/1/2723		1/1/2724		1/1/2725		1/1/2726		1/1/2727		1/1/2728		1/1/2729		1/1/2730		1/1/2731		1/1/2732		1/1/2733		1/1/2734		1/1/2735		1/1/2736		1/1/2737		1/1/2738		1/1/2739		1/1/2740		1/1/2741		1/1/2742		1/1/2743		1/1/2744		1/1/2745		1/1/2746		1/1/2747		1/1/2748		1/1/2749		1/1/2750		1/1/2751		1/1/2752		1/1/2753		1/1/2754		1/1/2755		1/1/2756		1/1/2757		1/1/2758		1/1/2759		1/1/2760		1/1/2761		1/1/2762		1/1/2763		1/1/2764		1/1/2765		1/1/2766		1/1/2767		1/1/2768		1/1/2769		1/1/2770		1/1/2771		1/1/2772		1/1/2773		1/1/2774		1/1/2775		1/1/2776	
---------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--	----------	--

B0217



Record Year	1/1/2006	1/1/2007	1/1/2008	1/1/2009	1/1/2010	1/1/2011	1/1/2012	1/1/2013	2/1/2014	2/1/2014	2/1/2014	2/1/2014	2/1/2014	2/1/2014
Name	Thomas S Troup													
Date of Birth	1/15/1948													
Proj Cash Balance Benefit	\$ 40,400.96	57.92	58.92	59.92	60.92	61.82	62.92	63.92	64.92	65.00	65.00	65.00	65.00	65.00
Proj Final Pay Benefit	\$ 37,339.62	92.4%												
1) Connectiv Cash Balance Sub-Plan														
Date	1/1/2006	1/1/2007	1/1/2008	1/1/2009	1/1/2010	1/1/2011	1/1/2012	1/1/2013	2/1/2014	2/1/2014	2/1/2014	2/1/2014	2/1/2014	2/1/2014
Age at val date	58.92	57.92	58.92	59.92	60.92	61.82	62.92	63.92	64.92	65.00	65.00	65.00	65.00	65.00
Hire date	10/15/1979													
Total compensation	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33
Interest credit	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%
Employer contribution credit	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%
Effective Date	1/1/1999													
Years of service as of val date	26.23	27.23	28.23	29.23	30.23	31.23	32.23	33.23	34.23	34.31	34.31	34.31	34.31	34.31
Years of service as of 1/1/1999	18.23													
Transition credit	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%
Opening balance	260,343.80	283,069.89	307,340.79	332,789.82	359,471.06	387,447.43	416,780.63	447,536.49	479,784.02	482,601.64	482,601.64	482,601.64	482,601.64	482,601.64
Interest Credit	12,164.09	13,728.89	14,906.03	16,140.26	17,434.35	18,791.20	20,213.88	21,705.52	23,271.13	23,271.13	23,271.13	23,271.13	23,271.13	23,271.13
Employer contribution credit EOY 06	8,109.23	8,109.23	8,109.23	8,109.23	8,109.23	8,109.23	8,109.23	8,109.23	8,109.23	8,109.23	8,109.23	8,109.23	8,109.23	8,109.23
Transition credit EOY 06	2,432.77	2,432.77	2,432.77	2,432.77	2,432.77	2,432.77	2,432.77	2,432.77	2,432.77	2,432.77	2,432.77	2,432.77	2,432.77	2,432.77
Ending balance	283,069.89	307,340.79	332,789.82	359,471.06	387,447.43	416,780.63	447,536.49	479,784.02	482,601.64	482,601.64	482,601.64	482,601.64	482,601.64	482,601.64
Beginning balance projected to 65	376,801.19	395,901.15	408,863.17	423,374.73	436,165.92	446,365.43	456,006.64	471,097.64	481,581.33	482,601.64	482,601.64	482,601.64	482,601.64	482,601.64
Annuitant factor at 65	11.95	11.95	11.95	11.95	11.95	11.95	11.95	11.95	11.95	11.95	11.95	11.95	11.95	11.95
Accrued Benefit (boy)	31,543.89	33,142.84	34,320.04	35,442.79	36,613.60	37,834.88	39,108.92	39,437.91	40,323.32	40,400.96	40,400.96	40,400.96	40,400.96	40,400.96
2) Prior Plan														
PAY N	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33
PAY N-1	75,930.59	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33
PAY N-2	71,771.99	75,930.59	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33
PAY N-3	71,880.42	71,771.99	75,930.59	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33
PAY N-4	71,982.55	71,880.42	71,771.99	75,930.59	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33
Final average pay for the Prior Plan	74,553.58	76,375.63	78,195.91	80,059.98	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33	81,092.33
Credited service for the Prior Plan	26.23	27.23	28.23	29.23	30.23	31.23	32.23	33.23	34.23	34.31	34.31	34.31	34.31	34.31
Future Increase of wage base	0.00%													
Covered Comp (boy)	69,732	69,732	69,732	69,732	69,732	69,732	69,732	69,732	69,732	69,732	69,732	69,732	69,732	69,732
Annual benefit at 65 (normal retirement date)	25,788.78	27,576.16	29,411.11	31,324.76	32,895.80	33,884.09	35,072.37	36,160.65	37,248.53	37,339.62	37,339.62	37,339.62	37,339.62	37,339.62

KRA00442

Record Year	2006	2007	2008	2009	1/1/2010	1/1/2011	1/1/2012	1/1/2013	1/1/2014	1/1/2015	1/1/2016	1/1/2017	1/1/2018	1/1/2019	1/1/2020
Name	Maurice Ward														
Date of Birth	8/15/1955														
Proj Cash Balance Benefit	\$ 55,722.67														
Proj Final Pay Benefit	\$ 57,065.99														
	102.4%														
1) Connectiv Cash Balance Sub-Plan															
Date	1/1/2006	1/1/2007	1/1/2008	1/1/2009	1/1/2010	1/1/2011	1/1/2012	1/1/2013	1/1/2014	1/1/2015	1/1/2016	1/1/2017	1/1/2018	1/1/2019	1/1/2020
Age at val date	50.33	51.33	52.33	53.33	54.33	55.33	56.33	57.33	58.33	59.33	60.33	61.33	62.33	63.3333	64.33
Hire date	1/1/1981														
Total compensation	94,131.49	94,131.49	94,131.49	94,131.49	94,131.49	94,131.49	94,131.49	94,131.49	94,131.49	94,131.49	94,131.49	94,131.49	94,131.49	94,131.49	94,131.49
Interest credit	4.86%	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%
Employer contribution credit	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%
Effective Date	1/1/1989														
Years of service as of val date	24.15	25.15	26.15	27.15	28.15	29.15	30.15	31.15	32.15	33.15	34.15	35.15	36.15	37.15	38.15
Years of service as of 1/1/1999	17.15														
Transition credit	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%
Operating balance	211,978.35	234,136.03	257,728.72	282,465.66	308,402.34	335,596.94	364,110.49	394,006.94	425,353.37	459,220.10	492,680.87	528,395.61	563,435.95	600,175.74	638,697.41
Interest Credit	9,920.59	11,355.80	12,499.84	13,698.58	14,957.51	16,276.45	17,659.36	19,109.34	20,628.64	22,223.88	23,895.02	25,627.19	27,326.64	29,108.52	30,951.22
Employer contribution credit EOY 06	8,413.15	8,413.15	8,413.15	8,413.15	8,413.15	8,413.15	8,413.15	8,413.15	8,413.15	8,413.15	8,413.15	8,413.15	8,413.15	8,413.15	8,413.15
Transition credit EOY 06	2,823.84	2,823.84	2,823.84	2,823.84	2,823.84	2,823.84	2,823.84	2,823.84	2,823.84	2,823.84	2,406.57	2,406.57	2,406.57	2,406.57	2,406.57
Ending balance	234,136.03	257,728.72	282,465.66	308,402.34	335,596.94	364,110.49	394,006.94	425,353.37	459,220.10	492,680.87	528,395.61	563,435.95	600,175.74	638,697.41	665,824.06
Beginning balance projected to 65	414,596.83	447,270.44	469,565.66	490,829.58	511,109.91	530,452.13	548,899.66	566,493.86	583,274.22	598,276.37	614,542.23	628,603.50	639,283.82	648,470.10	659,186.20
Annuity factor at 65	11.95	11.95	11.95	11.95	11.95	11.95	11.95	11.95	11.95	11.95	11.95	11.95	11.95	11.95	11.95
Accrued Benefit (boy)	34,707.56	37,443.22	39,309.66	41,089.77	42,787.53	44,406.77	45,951.10	47,424.00	48,828.76	50,168.65	51,446.36	52,623.50	53,517.50	54,370.35	55,183.65
ACE															
2) Prior Plan															
PAY N	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25
PAY N-1	83,543.32	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25
PAY N-2	82,008.94	83,543.32	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25
PAY N-3	78,538.16	82,008.94	83,543.32	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25
PAY N-4	78,154.48	79,538.16	82,008.94	83,543.32	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25
Final average pay for the Prior Plan	83,033.23	85,788.58	88,263.20	90,245.66	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25	91,921.25
Credited service for the Prior Plan	1/1/2006	1/1/2007	1/1/2008	1/1/2009	1/1/2010	1/1/2011	1/1/2012	1/1/2013	1/1/2014	1/1/2015	1/1/2016	1/1/2017	1/1/2018	1/1/2019	1/1/2020
Future increase of wage base	24.15	25.15	26.15	27.15	28.15	29.15	30.15	31.15	32.15	33.15	34.15	35.15	36.15	37.15	38.15
Covered Comp (boy)	81,780	81,780	81,780	81,780	81,780	81,780	81,780	81,780	81,780	81,780	81,780	81,780	81,780	81,780	81,780
Annual benefit at 65 (normal retirement date)	32,081.12	34,517.50	36,926.22	39,199.64	41,398.10	42,868.84	44,339.58	45,810.32	47,281.06	48,761.80	50,222.54	51,693.28	53,164.02	54,634.76	56,106.80

KRA00443

Record  
Year  
Name  
Date of Birth  
Proj Cash Balance Benefit  
Proj Final Pay Benefit

Jerome Charles  
10/15/1949  
\$ 46,766.33  
\$ 47,051.77

100.6%

# 1) Connolly Cash Balance Sub-Plan

Date	1/1/2006	1/1/2007	1/1/2008	1/1/2009	1/1/2010	1/1/2011	1/1/2012	1/1/2013	1/1/2014	1/1/2014	1/1/2014	1/1/2014	1/1/2014	1/1/2014
Age at val date	56.17	57.17	58.17	59.17	60.17	61.17	62.17	63.17	64.17	65.00	65.00	65.00	65.00	65.00
Hire date	9/10/1979													
Total compensation	86,492.78	86,492.78	86,492.78	86,492.78	86,492.78	86,492.78	86,492.78	86,492.78	72,077.32					
Interest credit	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%
Employer contribution credit	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%
Effective Date	1/1/1999													
Years of service as of val date	26.31	27.31	28.31	29.31	30.31	31.31	32.31	33.31	34.31	35.15	35.15	35.15	35.15	35.15
Years of service as of 1/1/1999	19.31													
Transition credit	4%	4%	4%	4%	4%	4%	4%	4%	4%	4%	4%	4%	4%	4%
Opening balance	283,010.00	308,363.88	335,428.48	363,805.76	393,559.33	424,755.93	457,465.60	491,781.67	527,721.10	558,637.85	558,637.85	558,637.85	558,637.85	558,637.85
Interest Credit	13,244.87	14,955.65	16,288.28	17,644.58	19,007.83	20,600.66	22,187.08	23,850.44	25,328.73					
Employer contribution credit EOY 06	8,648.28	8,648.28	8,648.28	8,648.28	8,648.28	8,648.28	8,648.28	8,648.28	8,648.28					
Transition credit EOY 06	3,459.71	3,459.71	3,459.71	3,459.71	3,459.71	3,459.71	3,459.71	3,459.71	3,459.71					
Ending balance	306,363.88	335,428.48	363,805.76	393,559.33	424,755.93	457,465.60	491,781.67	527,721.10	558,637.85	558,637.85	558,637.85	558,637.85	558,637.85	558,637.85
Beginning balance projected to 65	423,901.14	446,871.72	463,808.00	479,570.12	494,753.88	509,313.44	523,151.38	536,368.78	548,965.21	558,637.85	558,637.85	558,637.85	558,637.85	558,637.85
Annuit factor at 65	11.95	11.95	11.95	11.95	11.95	11.95	11.95	11.95	11.95	11.95	11.95	11.95	11.95	11.95
Accrued Benefit (boy)	36,486.86	37,408.84	38,810.91	40,147.18	41,421.64	42,837.14	43,786.42	44,903.08	46,356.59	46,766.33	46,766.33	46,766.33	46,766.33	46,766.33

## ACE

2) Prior Plan	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
PAY N	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58
PAY N-1	79,938.92	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58
PAY N-2	76,490.39	79,938.92	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58
PAY N-3	77,838.83	76,490.39	79,938.92	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58
PAY N-4	74,529.78	77,838.83	76,490.39	79,938.92	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58
Final average pay for the Prior Plan	76,494.32	80,323.08	81,490.01	82,926.55	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58	83,673.58
Credited service for the Prior Plan	1/1/2006	1/1/2007	1/1/2008	1/1/2009	1/1/2010	1/1/2011	1/1/2012	1/1/2013	1/1/2014	1/1/2014	1/1/2014	1/1/2014	1/1/2014	1/1/2014	1/1/2014
Future increase of wage base	26.31	27.31	28.31	29.31	30.31	31.31	32.31	33.31	34.31	35.15	35.15	35.15	35.15	35.15	35.15
Covered Comp (eoy)	69,732	69,732	69,732	69,732	69,732	69,732	69,732	69,732	69,732	69,732	69,732	69,732	69,732	69,732	69,732
Annual benefit at 65 (normal retirement date)	33,046.48	35,100.54	36,914.32	38,891.93	40,581.02	41,919.79	43,258.57	44,687.35	45,936.13	47,051.77	47,051.77	47,051.77	47,051.77	47,051.77	47,051.77

KRA00444

Record Year	1/1/2006	1/1/2007	1/1/2008	1/1/2009	1/1/2010	1/1/2011	1/1/2012	1/1/2013	1/1/2014	1/1/2015	1/1/2016	1/1/2017	1/1/2018	1/1/2019	2/1/2019
Name	Joseph Fink														
Date of Birth	1/15/1954														
Proj Cash Balance Benefit	\$ 42,343.33														
Proj Final Pay Benefit	\$ 45,441.96	107.3%													
1) Connectiv Cash Balance Sub-Plan															
Date	1/1/2006	1/1/2007	1/1/2008	1/1/2009	1/1/2010	1/1/2011	1/1/2012	1/1/2013	1/1/2014	1/1/2015	1/1/2016	1/1/2017	1/1/2018	1/1/2019	2/1/2019
Age at val date	51.92	52.92	53.92	54.92	55.92	56.92	57.92	58.92	59.92	60.92	61.92	62.92	63.92	64.9167	65.00
Hire date	5/28/1987														
Total compensation	90,860.56	90,860.56	90,860.56	90,860.56	90,860.56	90,860.56	90,860.56	90,860.56	90,860.56	90,860.56	90,860.56	90,860.56	90,860.56	90,860.56	90,860.56
Interest credit	4.88%	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%
Employer contribution credit	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%
Effective Date	1/1/1999	19.60	20.60	21.60	22.60	23.60	24.60	25.60	26.60	27.60	28.60	29.60	30.60	31.60	31.88
Years of service as of val date	18.60														
Years of service as of 1/1/1999	11.60														
Transition credit	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%
Opening balance	188,902.84	187,396.73	207,388.73	228,350.35	250,328.61	273,372.82	297,534.67	322,868.37	348,430.75	377,281.41	406,482.82	437,100.51	469,203.15	502,882.77	505,803.78
Interest Credit	7,890.61	9,088.74	10,058.35	11,074.99	12,140.94	13,258.58	14,430.43	15,659.12	16,947.39	18,298.15	19,714.42	21,199.37	22,756.35	24,382.40	25,072.78
Employer contribution credit EOY 06	9,085.06	9,085.06	9,085.06	9,085.06	9,085.06	9,085.06	9,085.06	9,085.06	9,085.06	9,085.06	9,085.06	9,085.06	9,085.06	9,085.06	9,085.06
Transition credit EOY 06	1,817.21	1,817.21	1,817.21	1,817.21	1,817.21	1,817.21	1,817.21	1,817.21	1,817.21	1,817.21	1,817.21	1,817.21	1,817.21	1,817.21	1,817.21
Ending balance	187,396.73	207,388.73	228,350.35	250,328.61	273,372.82	297,534.67	322,868.37	348,430.75	377,281.41	406,482.82	437,100.51	469,203.15	502,882.77	505,803.78	505,803.78
Beginning balance projected to 65	306,724.52	332,121.70	350,551.82	368,129.04	384,893.38	400,862.27	416,131.56	430,675.47	444,546.64	457,776.17	470,393.75	482,427.68	493,904.96	504,851.35	505,803.78
Annuit factor at 65	11.95	11.95	11.95	11.95	11.95	11.95	11.95	11.95	11.95	11.95	11.95	11.95	11.95	11.95	11.95
Accrued Benefit (boy)	25,677.42	27,803.66	29,346.41	30,817.90	32,221.32	33,565.83	34,856.43	36,093.97	37,275.19	38,392.70	39,457.88	40,466.40	41,417.22	42,313.50	42,143.33
ACE															
2) Prior Plan															
PAY N	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76
PAY N-1	80,857.22	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76
PAY N-2	78,270.35	80,857.22	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76
PAY N-3	76,489.64	78,270.35	80,857.22	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76
PAY N-4	75,211.71	76,489.64	78,270.35	80,857.22	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76
Final average pay for the Prior Plan	80,096.74	82,985.35	85,618.37	87,985.25	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76	89,654.76
Credited service for the Prior Plan	1/1/2006	1/1/2007	1/1/2008	1/1/2009	1/1/2010	1/1/2011	1/1/2012	1/1/2013	1/1/2014	1/1/2015	1/1/2016	1/1/2017	1/1/2018	1/1/2019	2/1/2019
Future increase of wage base	18.60	19.00	20.60	21.60	22.60	23.60	24.60	25.60	26.60	27.60	28.60	29.60	30.60	31.60	31.88
Covered Comp (eoy)	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Annual benefit at 65 (normal retirement date)	25,830.61	26,017.70	28,213.10	30,388.71	32,412.13	33,846.61	35,281.08	36,716.56	38,150.04	39,584.51	41,018.99	42,453.47	43,887.94	45,322.42	45,441.96

KRA00445

**Miller, Michelle**

---

**From:** Cadenhead, Bruce  
**Sent:** Monday, May 14, 2007 1:17 PM  
**To:** Miller, Michelle ; Kra, Ethan  
**Subject:** Expert witness

Version 3 is in the same directory as version 4. Version 3 uses year-end interest rates (as of the particular valuation date) to project and convert the cash balance. In versions 4 and 5 we use the beginning of year interest rate. Version 3 (2) is an earlier version of 3 that had an error in the Delmarva formula (for Troup) where the pay in excess of the breakpoint was being given both the base and the excess accrual rate instead of just the excess accrual rate.

Bruce Cadenhead, FSA, EA  
Principal  
Mercer Human Resource Consulting  
1166 Avenue of the Americas  
New York, NY 10036  
USA

phone: +1 212 345 7257  
mobile : +1 917 626 0689  
fax: +1 212 345 7414  
assistant: Irene Geczi  
assistant phone: +1 212 345 7149

<mailto:bruce.cadenhead@mercerc.com>  
[www.mercerHR.com](http://www.mercerHR.com)

Circular 230 disclaimer: The information contained in this document (including any attachments) is not intended by Mercer to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code that may be imposed on the taxpayer.

**Miller, Michelle**

---

**From:** Cadenhead, Bruce  
**Sent:** Monday, May 14, 2007 12:57 PM  
**To:** Miller, Michelle ; Kra, Ethan  
**Subject:** Corrected spreadsheet

There were two differences between version 4 and version 5  
- for Troup only, the offset was incorrect. Version 4 was using covered comp where the plan actually specifies a different averaging of the SS wage base. The correct averaging is used in version 5  
- for all participants, final average earnings under the old plan was being calculated using year-end final average earnings instead of beginning of year final average earnings

Bruce Cadenhead, FSA, EA  
Principal  
Mercer Human Resource Consulting  
1166 Avenue of the Americas  
New York, NY 10036  
USA

phone: +1 212 345 7257  
mobile : +1 917 626 0689  
fax: +1 212 345 7414  
assistant: Irene Geczl  
assistant phone: +1 212 345 7149

<mailto:bruce.cadenhead@mercercorp.com>  
[www.mercerHR.com](http://www.mercerHR.com)

Circular 230 disclaimer: The information contained in this document (including any attachments) is not intended by Mercer to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code that may be imposed on the taxpayer.



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

J. MICHAEL CHARLES; MAURICE W.  
WARD, JR.; and JOSEPH I. FINK,  
JR., on behalf of themselves and all  
similarly situated

Plaintiffs,

v.

PEPCO HOLDINGS, INC., CONECTIV,  
and PEPCO HOLDINGS RETIREMENT  
PLAN,

Defendants

Case No.: 05-702 (SLR)

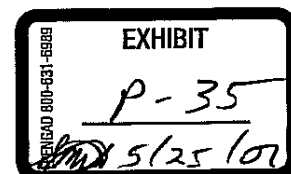
EXPERT REPORT OF ETHAN E. KRA, PH.D, F.S.A.

BACKGROUND

1. I am the Chief Actuary-Retirement of Mercer Human Resource Consulting. I am also a Fellow of the Society of Actuaries, a Fellow of the Conference of Consulting Actuaries, a member of the American Academy of Actuaries and an Enrolled Actuary under ERISA. I have given over 130 speeches on employee benefits issues over the past 30 years at various professional meetings and seminars and have authored or co-authored numerous articles on employee benefit issues. I am often quoted in such publications as The New York Times, The Wall Street Journal, Time, Newsweek and other financial publications. My curriculum vitae is appended to this report as Attachment 1.

2. My responsibilities at Mercer Human Resource Consulting include advising clients on the design, funding and expense allocation of employee and executive benefits, including retirement, death, disability and health benefits.

KRA00019



B0224

3. This Report has been prepared for counsel for PepCo Holdings, Inc.

4. My time on this project is being billed at \$625 per hour, plus expenses. Others working on this project are being billed at our standard hourly billing rates.

#### FINDINGS

5. In each year that I reviewed (1999 through 2007), the plan passes the 133 1/3% rule under IRC §411(b)(1)(B).

6. The pleadings note that Plaintiffs' benefits decreased in certain years. These negative adjustments to the annuity payable at normal retirement date were solely on account of interest rate changes. In each of those years, they experienced a positive benefit accrual on account of increased age, service and compensation received during the year.

7. As of the effective date of the plan amendment (January 1, 1999), the accrued benefit (payable at normal retirement date) for each of the Plaintiffs was larger under the amended plan than under the pre-amended plan. This determination was based on service and plan factors (including interest rates used for crediting to the cash balance accounts and for converting cash balance accounts to annuities) as of January 1, 1999 remaining constant through normal retirement date. Following is a table summarizing these results:

Name	Accrued Benefit at 1/1/99, payable at Normal Retirement Date under Pre-Amended Plan	Accrued Benefit at 1/1/99, payable at Normal Retirement Date under Amended Plan
Thomas S Troup	17,357.06	23,021.41
Maurice Ward	17,433.84	23,014.11
Jerome Charles	17,264.57	25,425.91
Joseph Fink	11,141.94	15,142.38

8. As of the effective date of the plan amendment (January 1, 1999), the projected benefit (payable at normal retirement date) for each of the Plaintiffs was larger under the amended plan than under the pre-amended plan. This determination was based on compensation and plan factors (including interest rates used for crediting to the cash balance accounts and for converting cash balance accounts to annuities) during 1999 remaining constant through the normal retirement date. This analysis reflects actual compensation received during 1999 and is not based solely on compensation as of January 1, 1999. However, for purposes of this determination, each Plaintiff was assumed to continue to earn service through his normal retirement date. Following is a table summarizing these results:

Name	Projected Benefit at 1/1/99, payable at Normal Retirement Date under Pre-Amended Plan	Projected Benefit at 1/1/99, payable at Normal Retirement Date under Amended Plan
Thomas S Troup	28,982.51	38,278.10
Maurice Ward	42,933.15	50,458.26
Jerome Charles	31,953.78	41,151.88
Joseph Fink	33,469.50	39,376.03

#### METHODS, ASSUMPTIONS AND DATA

9. In preparing this report, I have reviewed the following documents:

- Part One CONECTIV CASH BALANCE SUB-PLAN Effective as at January 1, 1999.
- ATLANTIC CITY ELECTRIC COMPANY RETIREMENT PLAN As Amended and Restated Effective January 1, 1994
- DELMARVA POWER & LIGHT COMPANY RETIREMENT PLAN as amended or restated through January 1, 1995



ATTACHMENT 1

**Ethan E. Kra**

Mercer Human Resource Consulting  
1166 Avenue of the Americas  
New York, NY 10036  
Phone: 212-345-7125

***Education:***

B.A., Yale University, summa cum laude, honors with exceptional distinction in mathematics, 1969.

M.A., Yale University, mathematics, 1969.

M.Phil., Yale University, mathematics, 1973.

Ph.D., Yale University, mathematics, 1974.

Thesis: Infinitary Forcing for Languages with the Q-Quantifier: Fefferman Vaught Theorems for Infinitary Forcing.

Academic Honors: Woodrow Wilson Fellow

National Science Foundation Fellow

Prize Teaching Fellowship (Yale University)

Phi Beta Kappa

***Professional Organization and Credentials:***

Fellow, Society of Actuaries (1976)

Vice President (2006- )

Board of Governors (1997-2000); Operations Committee (1997-2000)

Pension Section Council (1991-94), Vice-Chair (1992-93), Chair (1993-94)

FAS 106 Task Force (1993-99), Co-chair (1993-99)

Financial Economics and the Actuarial Model Task Force (jointly held with American Academy of Actuaries (2002- ), Chair (2002-2004)

Discipline Committee (2000-05)

Retirement Practice Advancement Committee (1992-2004), Chair (1997-2000)

Non-Mortality Decrement Task Force (2000-04)

Jointly Administered Examinations for Enrollment of Actuaries Committee (1978-79)

Part 4 Examination Committee (1979-80)

**ATTACHMENT I**

Fellow, Conference of Consulting Actuaries (1985)  
Intersector Committee (1992-94)  
Member, American Academy of Actuaries (1979)  
Board of Directors (2003-2006)  
Pension Practice Council (1993-94, 1997- ), Vice Chair (2000-03, 2005- )  
Pension Committee (1994- )  
Defined Benefit Revitalization Task Force (2003-04)  
Washington Forum Planning Committee (2002)  
Strategic Planning Task Force (1997-98)  
Member, American Society of Pension Actuaries (1996)  
American Benefits Council (formerly known as Association of Private Pension and Welfare Plans)  
Retirement Savings Committee (1991-1997)  
Retirement and Investment Policy Committee (1999- )  
Retirement Income Task Force (1997- )  
ERISA Industry Committee  
Pension Funding Task Force (2004- )  
Retirement Security Committee (2003- )  
Enrolled Actuary (1979)  
Chartered Life Underwriter (1977)  
Insurance Licenses in New York and New Jersey  
Actuarial Standards Board General Committee (2002-2004)

**Employment:**

Mercer Human Resource Consulting, 1977 to present.

Currently Chief Actuary-Retirement, with responsibilities in the areas of design and funding of pension and group insurance benefits, structuring and funding of non-qualified pension benefits years and the proper accounting for expense of employee benefits.

Internal positions include:

- Chair, Actuarial Resource Network
- Former Chair, New York Region Professional Standards Committee



**ATTACHMENT 1**

Principal (1984-1989); Managing Director (1989 to present); designation subsequently changed from Managing Director to Worldwide Partner.

Prudential Insurance Company of America, 1973-77.

Actuarial program, including assignments in long and short term disability insurance (3/76-4/77); group pensions (8/74-2/76); group insurance systems and aviation reinsurance.

Yale University, 1971-73.

Prize Teaching Fellow, 1972-73

Teaching Fellow, 1971-72

***Speeches and Lectures:***

"Pension Reform: What You Need to Know and What You Need to Do", panelist on Corporate Treasurers Council webcast.

"Late Breaking Developments", panelist at the 2006 Conference of Consulting Actuaries Annual Meeting.

"Pension Funds in Crisis – Next Generation Plan Design: What Will It Look Like for Generation X and Y?", panelist at Strategic Research Institute Conference.

"Pension Reform: What You Need to Know and What You Need to Do", panelist at the Association of Financial Professionals Annual Conference.

"Are Defined Benefit Plans an Endangered Species?", panelist at OPERS 5th Annual Investment Forum.

"Pension Accounting Reform & the Future of Defined Benefit Plans – Did the Markets, the Accounting or the Funding Rules Cause the Pension Crisis?", panelist at Strategic Research Institute Conference.

"General Session 1 – Pension Funding Reform", panelist at the 2006 Enrolled Actuaries Meeting.

"Late Breaking Developments", panelist at the 2005 Conference of Consulting Actuaries Annual Meeting.

"Addressing the Financial Risks from Retirement Systems Seminar: Changing Our Focus: Consulting About Risk", panelist at the 2005 Society of Actuaries Spring Meeting.

"2005 Pension Symposium – Pension Funding Reform", speaker at the symposium co-sponsored by the American Academy of Actuaries, the American Society of Pension Professionals & Actuaries and the Society of Actuaries.

"Practicing Professionalism", panelist at the 2005 Enrolled Actuaries Meeting.

"Education 2005: Update from the Pension Perspective", panelist at the 2004 Society of Actuaries Annual Meeting.

**ATTACHMENT 1**

- "Pension Funding Proposals", panelist at the 2004 Conference of Consulting Actuaries Annual Meeting.
- "Late Breaking Developments", panelist at the 2004 Conference of Consulting Actuaries Annual Meeting.
- "Late Breaking Developments", panelist at the 2004 Society of Actuaries Annual Spring Meeting.
- "The Great Unknown: Q & N/A's", panelist at the 2004 Enrolled Actuaries Meeting.
- "Late Breaking Developments", panelist at the 2003 Conference of Consulting Actuaries Annual Meeting.
- "The Great Controversy Symposium: Employer Perspective (Part 1)", moderator and panelist at the SOA Symposium, "The Great Controversy: Current Pension Actuarial Practice in Light of Financial Economics".
- "Late Breaking Developments", panelist at the 2003 Society of Actuaries Annual Spring Meeting.
- "Rulings and Regulations Update", panelist at the 2003 Enrolled Actuaries Meeting.
- "Q and N/A", panelist at the 2002 Conference of Consulting Actuaries Annual Meeting.
- "Late Breaking Developments", panelist at the 2002 Conference of Consulting Actuaries Annual Meeting.
- "Late Breaking Developments", panelist at the 2002 Society of Actuaries Annual Meeting.
- "Does the Syllabus Prepare Us for the Jobs of the Future?", panelist at the 2002 Society of Actuaries Annual Meeting.
- "Rulings and Regulations Update", panelist at the 2002 Society of Actuaries Annual Spring Meeting.
- "New Mortality Tables on Pension Plans", panelist at the 2002 Enrolled Actuaries Meeting.
- "Rulings and Regulations Update", panelist at the 2002 Enrolled Actuaries Meeting.
- "Is That Your Final Answer?", panelist at the 2001 Conference of Consulting Actuaries Annual Meeting.
- "Late Breaking Developments – Wuss Up!", panelist at the 2001 Conference of Consulting Actuaries Annual Meeting.
- "Does ERISA Bias Lead to Equity Investment?", panelist at the Society of Actuaries 2001 Annual Spring Meeting.
- "Late Breaking Developments Part 2: Court Cases", moderator at the Society of Actuaries 2001 Annual Spring Meeting.
- "Effective Use of Pension Surplus", panelist at the 2001 Enrolled Actuaries Meeting.
- "Funding Retiree Welfare Benefits", panelist at the 2001 Enrolled Actuaries Meeting.

ATTACHMENT I

- "Rulings and Regulation Update", panelist at the 2001 Enrolled Actuaries Meeting.
- "Late Breaking Developments", panelist at the Conference of Consulting Actuaries 2000 Annual Meeting.
- "Déjà vu All Over Again – Q&N/A's", panelist at the Conference of Consulting Actuaries 2000 Annual Meeting.
- "Financing Voluntary Nonqualified Deferred Compensation Plans", presenter at Financial Executives Institute National teleconference.
- "Late Breaking Developments and Rulings", panelist at the Society of Actuaries 2000 Annual Spring Meeting.
- "Discussion of IRS Gray Book and PBGC Blue Book", panelist at 2000 Enrolled Actuaries Meeting.
- "Rulings and Regulations Update", panelist at 2000 Enrolled Actuaries Meeting.
- "Q&NA's – Gray Areas", panelist at 2000 Enrolled Actuaries Meeting.
- "Reopening the Great Debate: ERISA Funding", panelist at the Society of Actuaries 1999 Annual Meeting.
- "Dial 10-10-GATT for Pension Plan Mortality", panelist at the Society of Actuaries 1999 Annual Meeting.
- "Q&NA's", panelist at the Conference of Consulting Actuaries 1999 Annual Meeting.
- "Late Breaking Developments", panelist at the Conference of Consulting Actuaries 1999 Annual Meeting.
- "Overview of Deferred Compensation Plans", panelist at 1999 Non-Qualified Executive Retirement Programs Conference sponsored by International Business Communications.
- "Pension Rulings and Regulations Update", panelist at the Society of Actuaries 1999 Annual Spring Meeting.
- "Discussion of Gray Book Questions and Answers", panelist at 1999 Enrolled Actuaries Meeting.
- "Rulings and Regulations Update", panelist at 1999 Enrolled Actuaries Meeting.
- "Tales of Terror – Ethics, Actuaries, the ABCD and the Law", speaker at the Conference of Consulting Actuaries 1998 Annual Meeting.
- "Pension Rulings and Regulations Update", panelist at the Society of Actuaries 1998 Annual Meeting.
- "Technical Concerns: Late-Breaking Pension Developments", panelist at the Society of Actuaries 1998 Annual Spring Meeting.
- "Discussion of Gray Book Questions and Answers", panelist at 1998 Enrolled Actuaries Meeting.

ATTACHMENT 1

- "Postretirement Welfare Benefits", panelist at 1998 Enrolled Actuaries Meeting.
- "Exercising Professional Judgement – An Exercise in Futility", panelist of General Session #1 of the 1998 Enrolled Actuaries Meeting.
- "Questions and Answers with the Experts", panelist at Conference of Consulting Actuaries 1997 Annual Meeting.
- "So What's New?—Late Breaking Developments", panelist at Conference of Consulting Actuaries 1997 Annual Meeting.
- "Financing Executive Deferred Compensation with Life Insurance—Does It Make Economic Sense When the Insurance Company Doesn't Run the Numbers?", panelist at the American Bar Association's 1997 Annual Meeting.
- "Split Dollar Life Insurance – The True Economics (Pre TAM/PLR)", panelist at the American Bar Association's 1997 Annual Meeting.
- "Trends & Issues in Non-Qualified Pension Plans", speaker at the Financial Executives Institute sponsored by the Committee on Investment of Employee Benefit Assets.
- "Pension Simplification – Defined Benefit Issues", panelist at the Society of Actuaries 1997 Annual Spring Meeting.
- "Approaching the Decision Making Process: How to Compare the Alternatives", panelist at 1997 Non-Qualified Executive Retirement Programs Conference sponsored by International Business Communications.
- "Employee Benefits in Captives", panelist at 1997 Captives Insurance Operations Conference.
- "Post-Retirement Welfare Benefits", panelist at 1997 Enrolled Actuaries Meeting.
- "Exercising Professional Judgment – An Exercise in Futility?", panelist at 1997 Enrolled Actuaries Meeting.
- "Gray Book Questions and Answers", speaker at 1997 Enrolled Actuaries Meeting.
- "Small Business Job Protection Act of 1996 (Pension Simplification???)", panelist of General Session #1 at 1997 Enrolled Actuaries Meeting.
- "Basics of Funding Retiree Medical", panelist at Conference of Consulting Actuaries 1996 Annual Meeting.
- "Plan Qualification/Registration Issues for Multinational Sponsors", moderator and panelist at the Society of Actuaries 1996 Spring Meeting.
- "SFAS 106/112 For the 'Know it All'", co-chair and speaker at Society of Actuaries May 1996 seminar.
- "Employee Benefit in Captives" speaker at 1996 Captive Insurance Operations Conference sponsored by the Hartford Institute on Insurance Taxation.

ATTACHMENT I

- "Non-Qualified Executive Compensation" chair and moderator for Center for Business Intelligence seminar; spoke on "Integrating Non-qualified Plan Objectives to Attract & Retain Key Employees" and "Funding and Securing Non-Qualified Supplemental Executive Benefit Programs".
- "Gray Book Questions and Answers", speaker at 1996 Enrolled Actuaries Meeting.
- "Pick your iq", speaker at 1996 Enrolled Actuaries Meeting.
- "415 Limitations After GATT - Revenue Ruling 95-29" speaker at 1996 Enrolled Actuaries Meeting.
- "How to Calculate Federal Insurance Contributions Act Tax on Supplemental Executive Retirement Plans", moderator and speaker at the Society of Actuaries 1995 Spring Meeting.
- "Employee Benefits and U.S. Captives", speaker at the 33rd RJMS Annual Conference.
- "Employee Benefits in Captives" speaker at Tenth Anniversary Captive Insurance Operations Conference.
- "Pick Your i", speaker at 1995 Enrolled Actuaries Meeting.
- "Pension Aspects of GATT", speaker at the Employee Benefits Group Inc.
- "Financing Corporate Liabilities", speaker at Benefit and Financial Strategies after OBRA, seminars sponsored by CIGNA.
- "Why Aren't More Captives Writing Employee Benefit Coverage?", speaker at 21st Annual Captive Insurance Companies Association, Inc. Conference.
- "Post-Retirement Welfare Benefits", speaker at 1994 Enrolled Actuaries meeting.
- "Employee Benefits", speaker at 1994 Conference on Offshore Captive Insurance Operations sponsored by the Center for Tax Education and Research.
- "Employee Benefits in a Captive Insurance Company?", speaker at joint Mercer/Marsh & McLennan client seminars.
- "Retirement Programs for Law Firm Partners", speaker, Symposium on Employee Benefits.
- "FAS 106 Technical Issues", speaker and co-chair at Society of Actuaries Seminar.
- "FAS 106 Consulting Issues", speaker and co-chair at Society of Actuaries Seminar.
- "Post Retirement Welfare Benefits - Funding", panelist at 1993 Enrolled Actuaries Meeting.
- "Cash Balance Plans" moderator at Society of Actuaries Seminars.
- "FAS 106 Strategies and the Impact on Executive Compensation", speech at Healthcare Issues Confronting Corporate America, Client Forum sponsored by Chase Manhattan Bank.
- "Funding and Financing Retiree Health: Who Should Pay and How?", speech at Post-Retirement Health Care Benefits sponsored by Institute for International Research.

ATTACHMENT 1

- "Post Retirement Health Benefit Funding", moderator and speaker at the Society of Actuaries 1992 Spring Meeting.
- "Post-Employment Welfare Benefits - Funding", moderator and speaker at 1992 Enrolled Actuaries Meeting.
- "Permitted Disparity", presentation to Practising Law Institute.
- "Funding & Insured Funding Vehicles for Retiree Health", speech at The First Annual Pension and Employee Benefits Conference sponsored by Pensions and Investments.
- "Funding and Financing Retiree Medical Benefits: Cost Effective Strategies", speech at Post-Retirement Health Care Benefits seminar sponsored by Institute for International Research.
- "Audience Dialogue with the IRS", moderator at the Society of Actuaries 1991 Spring Meeting.
- "Message from the IRS", moderator at the Society of Actuaries 1997 Spring Meeting.
- "Funding Alternatives for Post-Employment Welfare Benefits", speeches at Post Retirement Health Care seminars sponsored by Fidelity Investments Institutional Services.
- "Funding Alternatives for Post Employment Benefits", speaker and moderator at 1991 Enrolled Actuaries Meeting.
- "Integrating Retirement Plans into Estate Planning", speech to Tax & Estate Planning Council of Nassau County.
- "Post-Retirement Medical Benefits: A Look at FASB Requirements and New Strategies for Controlling Costs", speaker at Mercer seminars.
- "Post-Retirement Medical Benefits vs. Pension Benefits: Contrast in Asset/Liability Issues", speech at Asset Liability Management for Pension Funds sponsored by the Institute for International Research.
- "What's New in Retiree Medical Funding Vehicles", speech at Post Retirement Medical seminar sponsored by Institute for International Research.
- "Mergers and Acquisitions", speech to the New York County Lawyers Association.
- "Mergers and Acquisitions, Employee Benefit Issues", speech to New York Metro Area Chapter - ISCEBS.
- "The Funding and Financing of Retiree Medical Benefits", speech at Benefits News Analysis seminar on Managing Post-Retirement Medical Benefits.
- "Applications for Post Retirement Medical Obligations", speech at Morgan Stanley seminar on ESOP Strategies and Implementation Issues.
- "Pre-funding vs. Pay-as-you-go: Viable & Innovative Financing Options", speech at Institute for International Research seminar on Designing & Funding Cost-effective Employee Benefit Plans.



ATTACHMENT 1

- "Changing Perspectives Which Motivate Asset - Liability Management: What Are the True Liabilities and How Do They Affect Matching?", speech at the second Annual Meeting on Asset/ Liability Management for Pension Funds sponsored by the Institute for International Research.
- "Funding Executive Benefits", discussion leader for the Financial Executives Institute Financial Policy Peer Group Series.
- "Highly Compensated Employees... Controlled Groups... Lines of Business...Aggregation Techniques", workshop speaker at Section 89 seminar sponsored by William M. Mercer, Inc.
- "Omnibus Reconciliation Act of 1987 - Effects on Employee Benefit Plans", speech at William M. Mercer, Inc. seminar.
- "Managing Future Liabilities - Investment Strategies for Funding Retiree Health Care Benefits", speech at first Annual Symposium on Funding Post-employment Health Care Benefits sponsored by the Institute for International Research.
- "Actuarial Considerations for Self-funded Benefit Plans", panel seminar speaker at New York State Public Sector Coalition on Health Benefits Annual Conference.
- "The Actuary and Post-retirement Welfare Benefits", speech to Actuaries Club of New York.
- "The Effects of Tax Reform on Welfare Plans", lecture at 1987 Accounting Conference sponsored by the Foundation for Accounting.
- "Coping with COBRA", speech to the Cultural Institutions Personnel Group.
- "Defined Contribution Plans - Impact of 1986 Tax Reform Act", panel speaker at Mercer-Meidinger seminar.
- "Tax Reform Legislation - Whither Goest Thou?", panel speaker at annual meeting of Conference of Actuaries in Public Practice.
- "An Advanced Course in Employee Benefits", course leader/teacher for American Management Association.
- "Select and Ultimate Financial Assumptions in Pension Plan Valuations", workshop chairperson at the Society of Actuaries 1985 Annual meeting.
- "Coping with REACT Regulations", workshop panelist for the American Pension Conference.
- "The Effect of the Treasury Tax Reform Proposals on Educational Institutions", speech to the Eastern Association of College and University Officers.
- "Post Retirement Medical and Death Benefits", speech to American Management Association Annual Compensation/Employee Benefits Briefing.
- "Using Insurance as a Capital Accumulation Device", course teacher for Practising Law Institute.

**ATTACHMENT 1**

- "Fundamentals of Employee Benefits", course leader/teacher for American Management Association.
- "Retirement Equity Act", speech to New York Personnel Management Association.
- "Post-retirement Medical and Death Benefits: The Unrecognized Liability", speaker at Mercer-Meidinger seminar.
- "Funding Vehicles for Pension Plans", workshop chairperson at the Society of Actuaries 1983 Spring Meeting.
- "Hidden Pension Liabilities in an Acquisition", speaker at Mercer-Meidinger seminar.
- "New Challenges and Opportunities for Welfare Plans", panelist at Mercer workshop.
- "Opting Out of Social Security", speaker at Mercer sponsored seminar for hospital personnel executives.
- "Executive Benefits Funded Through Life Insurance", speech at Mercer sponsored seminar for hospital personnel executives.
- "Response to the Multiemployer Pension Plan Amendments Act of 1980", workshop chairperson at the Society of Actuaries 1981 Spring Meeting.
- "Considerations in Selection of Actuarial Assumptions/Methods for Larger Plans", teacher at Enrolled Actuaries' Annual Meeting.
- "Plan Sponsor Responses To The "Age Discrimination in Employment Act" (ADEA) – Employee Benefits", workshop chairperson at the Society of Actuaries 1980 Spring Meeting.
- "Coordination of Social Security with...", workshop co-chairperson at Society of Actuaries 1979 Annual Meeting.

***Publications:***

- "A Proposal for Pension Funding Reform", The Future of Pension Plan Funding and Disclosure Monograph, July 2005, the Society of Actuaries, co-authored with Donald E. Fuerst.
- "Durational (Select and Ultimate) Discount Rates for FAS 87 and 106 Valuations", The Pension Forum, December 2004, the Society of Actuaries, co-authored with Ron Iverson, Heidi Rackley and Steve Alpert.
- "Late Breaking Developments", transcript, 2003 Conference of Consulting Actuaries Annual Meeting.
- "Late Breaking Developments", transcript, 2002 Conference of Consulting Actuaries Annual Meeting.
- "Q & N/A", transcript, 2002 Conference of Consulting Actuaries Annual Meeting.
- "Late Breaking Developments", transcript, 2002 Conference of Consulting Actuaries Annual Meeting.

ATTACHMENT 1

"New Mortality Tables for Pension Plans", transcript, 2002 Enrolled Actuaries Meeting.

"Rulings and Regulations Update", transcript, 2002 Enrolled Actuaries Meeting.

"Is That Your Final Answer?", transcript, 2001 Conference of Consulting Actuaries Annual Meeting.

"Late Breaking Developments - Wass Up!", transcript, 2001 Conference of Consulting Actuaries Annual Meeting.

"Déjà vu All Over Again – Q & N/A!", transcript, 2000 Conference of Consulting Actuaries Annual Meeting.

"Late Breaking Developments", transcript, 2000 Conference of Consulting Actuaries Annual Meeting.

"Q&N/A", transcript, 1999 Conference of Consulting Actuaries Annual Meeting.

"Late Breaking Developments", transcript, 1999 Conference of Consulting Actuaries Annual Meeting.

"So What's New? Late Breaking Developments", transcript, 1997 Conference of Consulting Actuaries Annual Meeting.

"Post-Retirement Welfare Benefits", transcript, 1997 Enrolled Actuaries Meeting.

"Exercising Professional Judgment—An Exercise in Futility?", transcript, 1997 Enrolled Actuaries Meeting.

"Small Business Job Protection Act of 1996 (Pension Simplification???)", transcript, 1997 Enrolled Actuaries Meeting.

"Basics of Funding Retiree Medical Funding", transcript, 1996 Conference of Consulting Actuaries Meeting.

"Pick your iq", transcript, 1996 Enrolled Actuaries Meeting.

"415 Limitations After GATT—Revenue Ruling 95-29" transcript, 1996 Enrolled Actuaries Meeting.

"Pick Your i", transcript, 1995 Enrolled Actuaries Meeting.

"New Rules for Underfunded Pension Plans, The Retirement Protection Act of 1994", a William M. Mercer, Inc. commentary, co-author.

"Post-Retirement Welfare Benefits", Transcript, 1994 Enrolled Actuaries Meeting.

"Post-Retirement Welfare Benefits - Funding", Transcript, 1993 Enrolled Actuaries Meeting.

"Employee Benefits in a Captive Insurance Company?", Mercer Bulletin, July, 1993.

"Decisions - FAS 106", Mercer Bulletin, September 1992.

"Postretirement Health Benefits Funding", Record of the Society of Actuaries 1992, Vol. 18, No. 1A.

"Post-Retirement Health Benefit Funding", Transcript, 1992 Enrolled Actuaries Meeting.

**ATTACHMENT 1**

- "Retiree Medical Benefits: Making the Fund or Finance Decision", co-author with William A. Bader, *The Journal of Corporate Accounting and Finance*, Spring 1992.
- "Audience Dialogue with the IRS", *Record of the Society of Actuaries* 1991, Vol. 17, No. 3.
- "Message from the IRS", *Record of the Society of Actuaries* 1991, Vol. 17, No. 3.
- "Funding Alternatives for Post Employment Benefits", Transcript, 1991 Enrolled Actuaries Meeting.
- "New Directions in Retirement Planning," a William M. Mercer, Inc. series of commentaries, co-author.
- "Miscellaneous 401(a)(4) and Related Issues; a Discussion of Various Issues", in *Complying With the New Nondiscrimination and Minimum Coverage Regulations*, Practising Law Institute, 1991.
- "Funding and Financing Retiree Medical Benefits", *Mercer Bulletin*, September 1991.
- "Retiree Health Benefits in the 1990's", a William M. Mercer, Inc. commentary, co-author.
- "Permitted Disparity" in *Complying With the New Nondiscrimination and Minimum Coverage Regulations*, Practising Law Institute, 1991.
- "Secular Trusts and Annuities - Securing Executive Benefits After Tax Reform", a William M. Mercer, Inc. commentary, co-author.
- "Omnibus Budget Reconciliation Act of 1987: What it Means to Pensions and Employee Benefits", a William M. Mercer, Inc. commentary, co-author.
- "Tax Reform: What It Will Mean to Benefits and Compensation - A Mercer-Meidinger Commentary", co-author.
- "Using Insurance as a Capital Accumulation Device", in *Executive Compensation*, Practising Law Institute.
- "How to Protect Yourself Against Medical Insurance Gaps", *Bottom Line Personnel*.
- "How to Identify Gaps In Life and Disability Insurance", *Bottom Line Personnel*.

***Internal Mercer Communiqués - author/co-author of the following:***

- "FAS 158 and Multiemployer Plans", co-authored with James Dexter.
- "Computation of Actuarial Value of Assets: Corridor Limit Application", co-authored with Carol Gramer.
- "Selecting Cross-Border Accounting Assumptions", co-authored with Bruce Cadenhead, Wendy McFee and Phil Turner.
- "Retiree medical Pre-funding in 401(h) accounts and VEBAs", co-authored with Heidi Rackley, Judy Bauserman, Barbara McGeoch, Scott Tucker and Derek Guyton.
- "International Accounting Changes Target Multiemployer Plans", co-authored with James Dexter.

ATTACHMENT I

- "Tax Effects of the New Medicare Prescription Drug Subsidy", co-authored with Fran Bruno and Mark Hamelburg.
- "Employee Benefits in a Captive Insurance Company", co authored with Rich Fuerstenberg, Mark Hamelburg and Henry Saveth.
- "DOL Benefits-in-a-Captive Ruling Imminent" co-authored with Henry Saveth, and Mark Hamelburg.
- "Peer Review of Cross-Border Actuarial Work", co-authored with Bruce Cadenhead.
- "Professional Standard – Signing and Peer Reviewing Actuarial Reports", co-authored with Derek Guyton.
- "Guidelines for Selecting Certain Assumptions", co-authored with Paul Zeisler and Bruce Cadenhead.
- "Spin-off Assumptions", co-authored with Bruce Cadenhead.
- "Pension Valuation Checklist for Multiemployer Plans: Updated to Reflect Changes Included in the Economic Growth and Tax Relief Reconciliation Act of 2001", co-authored with Carol Gramer.
- "Reorganization Status for Multiemployer Plans", co-authored with Carol Gramer.
- "Aggregate Entry Age Normal Funding Method Violates IRS Reasonable Funding Regulations".
- "Section 414(k) Plans – Actuarial Issues", co-authored with Ron Iverson.
- "Captive Insurance Companies and Employee Benefits", co-authored with Henry Saveth.
- "Select and Ultimate Discount Rates for FAS 87 & 106 Valuations", co-authored with Ron Iverson and Heidi Dexter.
- "Tax Gross Up Calculations for Executive Benefits", co-authored with Frank Burianek, Gary Thomas.
- "Professional Standard – Signing/Peer Reviewing Actuarial Reports".
- "Mergers and Acquisitions", co-authored with Bert Bernier, Edgar Friedman, Kevin Minor and Scott Tucker.
- "Automatic approval for change in funding method for plans with negative unfunded liability".
- "E-54—International Accounting Standards", co-authored with Ron Iverson, Wendy McFee, Larry Bader and Frank Todisco.
- "Pension Valuation Checklist for Multiemployer Plans", co-authored with Carol Gramer.
- "Change in SFAS 87/106 Measurement Date", co-authored with Kevin Minor and Bob Behar.
- "1996 Schedule B", co-authored with Bruce Cadenhead and Ed Greene.

ATTACHMENT 1

"Consulting Issues Relating to Repeal of IRC Section 415(e)", co-authored with Carol Gramer.

"PBGC Variable Premium Calculations", co-authored with Bob Behar and Steven Gagel.

"Document Retention".

"Plan Spinoffs".

"FAS 87 & 106 Discount Rates".

"Multiple Employer Plans: Do I have one and what do I do now?", co-authored with Joy Theobald.

"Technical Actuarial Questions on Bulletin Board".

"Peer Review for Actuarial Reports".

"Continuing Education for Actuaries".

"Negative Unfunded Accrued Liabilities", co-authored with David Jarrett.

"Separate Line of Business".

"Testimony on 401(a)(4) Regulation Package".

"Schedule B - Deficit Reduction Contribution".

"Required Distributions Under Section 401(a)(9) - Qualified Plans".

"Business Combination Accounting".

"Retroactively Changing the Amortization Period for Gains and Losses Recognized as of 1/1/88".

"Meeting With IRS".

"Meeting With IRS".

"U.S. Controlled Group Benefit Issue for Foreign Parent Companies".

"Meeting With IRS".

"Revenue Notice 89-70 Warning on Early Retirement Using 1/15, 1/30".

"Calculating Benefits for Employees Who Attain age 70½".

"Taxation of Long Term Care Insurance".

"Bank Ownership of Individual Policies".

"Proposed Section 89 and 125 Regulations".

"Required Distributions From Qualified Plans: One Year Deferral of Effective Date".

"Determination of FAS 87 Pension Expense for Secular Trusts".

"Analysis of Social Security Integration Requirements".

"Integration Under Tax Reform '86 - A White Paper".



ATTACHMENT 1

"Market Crash of October 19, 1987".

"DOL Guidelines for Benefit Plans under ADEA", co-authored with Solomon Weinberger.

*Quoted frequently by New York Times, Wall Street Journal, Business Week, Newsweek, Time, Fortune, etc.*

## Attachment 2

**Individual Data**

	Name	Thomas S Troup	Maurice Ward	Jerome Charles	Joseph Fink
Age as of 1/1/1999		49.92	43.33	49.17	44.92
Hire Date		10/15/1979	11/9/1981	9/10/1979	5/26/1987
Credited Service for the prior plan as of 1/1/1999		19.227	17.148	19.312	11.595
Transition Credit Rate		3%	3%	4%	2%
Cash Balance (opening balance)	1999	\$ 129,777.43	\$ 94,035.74	\$ 138,172.25	\$ 66,851.03
Compensation used for the Cash Balance Plan	1999	\$ 63,522.62	\$ 70,385.51	\$ 56,824.37	\$ 73,536.98
Compensation used for the Pre-Amended Plan	1999	\$ 63,522.62	\$ 69,132.01	\$ 56,824.37	\$ 66,033.68
	1998	\$ 65,531.14	\$ 68,120.34	\$ 54,204.90	\$ 64,323.53
	1997	\$ 63,439.78	\$ 69,931.73	\$ 57,735.84	\$ 66,544.46
	1996	\$ 61,973.14	\$ 61,050.93	\$ 53,503.84	\$ 59,343.20
	1995	\$ 61,074.37	\$ 59,737.64	\$ 57,686.84	\$ 56,983.59
	1994	\$ 59,267.75	\$ 58,872.04	\$ 56,237.84	\$ 53,092.05
Pre-Amended Plan	Delmarva	ACE	ACE	ACE	ACE

Cash Balance Plan Interest Crediting Rate for 1999: 5.01%, compounded annually

January 01, 2002 - December 31, 2002

For information contact:  
 Vanguard Participant Services  
 In the USA (800) 523-1188  
 Or via the internet at: [www.vanguard.com](http://www.vanguard.com)



HAURICE W WARD  
 421 W HERSCHEL ST  
 EGG HARBOR NJ 08215-3512

PEPCO HOLDINGS INC.  
 CONNECTIV RETIREMENT PLAN  
 PLAN No. : 020108

Confirmation Number : 17576414

THIS IS A REVISED STATEMENT

YOUR CASH BALANCE ACCOUNT

	Year-to-date
Opening Balance	\$ 138,245.26
Employer Contribution Credit	7,245.65
Interest Credit	7,354.65
Transition Credit	2,415.22
Ending Balance	\$ 155,260.78

Your transition credit percentage for the year was 3.00%.

Hire Date: November 09, 1981  
 Employment Status: EMPLOYED

YOUR CASH BALANCE ACCOUNT

Vanguard is pleased to provide you with this Cash Balance statement. The information presented in this statement is based on the available data on file. For those employees who are "grandfathered" (i.e., employees who, as of 12/31/1998 have either (a) completed 20 years of service or (b) attained age 50 or older) your grandfathered benefit may be greater. If you have questions regarding this statement, your balances, or if you notice any discrepancies, please contact Vanguard directly at 1(800)523-1188.

The "Employer Contribution Credit" shown above is based on your age as of December 31, 2002 (i.e., 5% pay credit for under age 30; 6% for age 30 to 34; 7% for 35 to 39; 8% for 40 to 44; 9% for 45 to 49; 10% for age 50 and over). Recognized pay includes base salary, bonus, overtime, awards, etc.

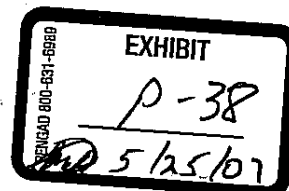
The "Interest Credit" is based on the 30 year U.S. Treasury Securities rate and changes each year. During 2002, your account grew by 5.32% as shown above. For 2003, the rate will decrease to 4.93%. This new rate will be reflected on next year's statement.

Page 1 of 2

3

1-2

x



PH1003777

KRA00168

B0244

**YOUR CASH BALANCE ACCOUNT**

(continued)

The "Transition Credit" shown above (if any) is based on your total service as of 1/1/1999 (i.e. those with 10 to 11 years of service at 1/1/1999 receive a 1% additional pay credit; 12-15 years receive a 2% credit; 16-19 years receive a 3% credit and 20-35 years receive an additional 4% credit). Transition credits continue until your years of service exceed 35, at which point they cease.

The "Ending Balance" (i.e., the value of your accounts as of 1/1/2003) is the sum of your Opening Balance plus your 2002 Employer Contribution Credit, Interest Credit, and Transition Credit.

The compensation you earned during the year was \$80,507.26.

**TRANSACTION DETAIL MODULE**

Date	Description	Rate	Transaction	
			Amount	Balance
	Opening Balance			\$138,245.26
12/31/2002	Interest Credit	5.320000000	7,354.65	145,599.91
12/31/2002	Employer Contribution Credit	9.000000000	7,245.65	152,845.56
12/31/2002	Transition Credit	3.000000000	2,415.22	155,260.78
	Ending Balance		17,015.52	\$155,260.78

96 of 157 DOCUMENTS

Copyright 2002 Crain Communications Inc.  
Business Insurance

May 13, 2002, Monday

**SECTION:** Pg. 3**LENGTH:** 1007 words**HEADLINE:** Benefits experts rebut report hitting cash balance payouts; Official contends that plans short-change participants**BYLINE:** JERRY GEISEL**BODY:**

WASHINGTON-Benefits consultants are attacking as biased and misleading a report by the Labor Department Office of the Inspector General that employers are shortchanging employees in cash balance pension plans by giving them less than what the workers are legally entitled to when they leave.

The inspector general's report examined 60 cash balance plans with more than 209,000 participants and found that, in 13 of those plans, employees who left employment before normal retirement age did not receive the pension benefits to which they were legally entitled. The inspector general's report estimates that, for the plans it reviewed, plan participants may be underpaid \$17 million a year.

Extrapolating those results to all cash balance plans-the inspector general cited industry estimates of a total of 300 to 700 such plans-plan participants leaving before retirement may be underpaid by between \$85 million and \$199 million annually, the report says. Employers sponsoring the plans were not identified.

The report, says Rep. Bernard Sanders, I-Vt., one of Congress' most vocal critics of cash balance plans, "proves that a number of companies are illegally slashing the pension benefits of their employees by hundreds of millions of dollars every single year by shifting to cash balance plans."

But Ann Combs, the Labor Department's assistant secretary for pension and welfare benefits, wrote the inspector general, questioning whether the study proves there is a need for greater federal scrutiny of cash balance plans.

"A number of questions came to mind as to whether the sampling methodology employed by the audit team was appropriate for reaching such a broad conclusion and whether the assumptions used to extrapolate the error from the sample to the overall population were correct," she wrote.

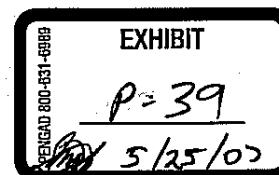
In the absence of the inspector general providing the Labor Department with more detailed information, "we cannot commit to redirecting our enforcement resources to cash balance plan benefit calculations at this time," Ms. Combs wrote.

Benefit consultants, who have examined the report in detail, said in most cases, employees in the plans the inspector general examined received the balances to which the plans said they were entitled.

"There is no evidence presented that the participants didn't receive what was promised to them by the plans," said Larry Sher, a principal and director of research at Buck Consultants Inc. in New York.

Consultants say the report based its findings on a method of calculating benefits that has never been required by the Internal Revenue Service.

Others say the report is so biased as not to be creditable.



Benefits experts rebut report hitting cash balance payouts; Official contends that plans short-change participants  
Business Insurance May 13, 2002, Monday

"I cannot accept that this was done by an unbiased evaluator," said Ethan Kra, chief actuary at William M. Mercer Inc. in New York.

A cash balance plan combines elements of defined benefit and defined contribution plans, though legally cash balance plans are defined benefit plans. Like defined benefit plans, employees in cash balance plans are protected from investment risk. The employer agrees to provide a certain benefit, based on a percentage of pay. In addition, the employer credits the benefit with interest, such as the prevailing rate on 30-year Treasury bonds.

Like defined contribution plans, benefits are expressed as an account balance or lump sum, which employees can take when they leave or retire. Employees also can take the amount as a monthly annuity, though few do so.

Benefit consultants' chief gripe with the report is that nearly all the shortfalls cited by the inspector general are not the result of employer mistakes. Rather, consultants say the shortfalls the report identified are due to the inspector general's reliance on a methodology outlined in an IRS notice-but which was never formally proposed as a regulation and has been rejected by at least one federal court.

"The inspector general is relying on something that hasn't even gotten to the level of a proposed regulation, and they are citing it as the gospel," Mr. Kra said.

"This is clearly an unsettled area of the law," said Alan Glickstein, a consultant in the Wellesley Hills, Mass., office of Watson Wyatt Worldwide.

At issue is whether there can be situations where cash balance plan participants are entitled to more than their account balances when they leave. In the 1996 notice, the IRS said the account balance must be projected to normal retirement age using the interest rate specified in the plan.

In an example provided by the IRS notice, an employee terminates employment at age 45 with an account balance of \$45,000. The plan provides interest credits of 8% a year. Using the 8% interest rate, the \$45,000 account balance projected to normal retirement age would be \$209,743.

Under the IRS methodology, the \$209,743 would be discounted using the 30-year Treasury bond rate-an index set under a 1994 federal law. The example assumes a 30-year T-bond rate of 6.5%. If \$209,743 is discounted to age 45 at 6.5%, the present value of the employee's account balance would be \$59,524.

As a result, the IRS said in its notice, if the cash balance plan paid the account balance of \$45,000 instead of \$59,524, the employee would receive \$14,524 less than the amount to which the employee is entitled.

The result, known as "whip-saw," can be avoided, under the IRS notice, if an employer uses the 30-year T-bond rate as an annual interest credit or one of several other interest rates, such as the one-year Treasury bill rate, plus one percentage point.

In March, a federal court, in a case involving Georgia-Pacific Corp.'s cash balance plan, rejected this methodology.

Contrary to what the inspector general is suggesting, "this is a methodology that never has been finalized and has been rejected by at least one court," Mr. Kra said.

Copies of the report, "PWBA Needs to Improve Oversight of Cash Balance Plan Lump Sum Distributions," is available at the Office of Inspector General's Web site, [www.oig.dol.gov](http://www.oig.dol.gov).

**LOAD-DATE:** May 17, 2002



FepCo

Accrual

$$= \text{AccDecy} - \text{AccD} \text{ w/o TS service \& P}$$

What about PS/TS

Old for rule on A factors

	5%	6%	7%	8%
*30	5%			
30-34	6%			
35-39	7%	0.98%		
40-44	8%	1.167%		
45-49	9%	1.89%		
50+	10%	1.95%		

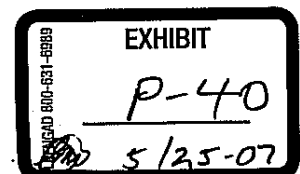
3.4.2 Interim credits until NRD

for VT's

5.2, cf. 1.56 ok

Barak Bassman

215-981-4771

**Marriott**  
 WARDMAN PARK HOTEL
KRA00001  
KRA00001

**In The Matter Of:**

*J. Michael Charles, et al*  
v.  
*Pepco Holdings, Inc., et al*

---

*JAMES B. KREMMEL*  
*March 13, 2007*

---

***REPORTING ASSOCIATES, LLC***

*Certified & Registered Professional Reporters*

*Cherry Hill -- Philadelphia -- Trenton*

*(888) 795-2323*



*www.ReportingAssociates.com*

1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
3           CIVIL ACTION NO. C.A. NO. 05-702 (SLR)

4           -----  
5           J. MICHAEL CHARLES; MAURICE W.  
6           WARD, JR.; and JOSEPH I. FINK, JR.,  
7           on behalf of themselves and all  
8           others similarly situated,

9                     Plaintiffs,

10                    v.

11           PEPCO HOLDINGS, INC.; CONECTIV, and  
12           PEPCO HOLDINGS RETIREMENT PLAN,

13                    Defendants.  
14           -----

15                    Philadelphia, Pennsylvania  
16                    Tuesday, March 13, 2007

17                    TRANSCRIPT of testimony of JAMES R.  
18                    KREMMEL, as taken by and before Sean M. Fallon, a  
19                    Registered Professional Reporter and Notary Public  
20                    of the Commonwealth of Pennsylvania, at the offices  
21                    of PEPPER HAMILTON LLP, 3000 Two Logan Square,  
22                    Eighteenth and Arch Streets, commencing at 10:12  
23                    o'clock in the forenoon.

Page 2

1 A P P E A R A N C E S:  
2 CHIMICLES & TIKELLIS LLP  
3 BY: JAMES R. MALONE, JR., ESQ.  
4 JOSEPH G. SAUDER, ESQ.  
5 One Haverford Centre  
6 361 West Lancaster Avenue  
7 Haverford, PA 19041  
8 (610) 642-8500  
9 jamesmalone@chimicles.com  
10 josephsauder@chimicles.com  
11 Attorneys for Plaintiffs

12 PEPPER HAMILTON LLP  
13 BY: KAY KYUNGSUN YU, ESQ.  
14 3000 Two Logan Square  
15 Eighteenth and Arch Streets  
16 Philadelphia, PA 19103-2799  
17 (215) 981-4000  
18 yukay@pepperlaw.com  
19 Attorneys for Defendants

20 LITTLER MENDELSON  
21 BY: SUSAN KATZ HOFFMAN, ESQ.  
22 Three Parkway  
23 1601 Cherry Street, Suite 1400  
24 Philadelphia, PA 19102-1321  
(267) 402-3000  
shoffman@littler.com  
Attorneys for Defendants

BARBARA ALEXANDER, ASSISTANT GENERAL COUNSEL  
Pepco Holdings, Inc.  
P.O. Box 231  
Wilmington, DE 19899-0231  
(302) 429-3206  
Attorney for Defendants

Page 4

1 P-14 Certificate of Authorized Signers, 172  
2 Corporate

3 P-15 Printout of webpage, ZeroDegrees 181

4

5 EXHIBITS PREVIOUSLY MARKED AND REFERRED TO

NUMBER	DESCRIPTION	PAGE
D-1	EMerging Times, Oct. 13, 1997	15
D-2	EMerging Times, Oct. 20, 1997	18
D-3	Conectiv Cash Balance Plan, Feb. 20, 1998	20
D-5	Facts Newsletter	39
D-6	Document entitled, Dear Conectiv Management Employee, Dec. 21, 1998	45
D-7	Your Conectiv Total Rewards	61
D-8	Conectiv Total Rewards, The Tangible and Hidden Paychecks	70
D-9	InSight Newsletter, March 1999	79
D-10	MidWeek Extra, June 23, 1999	84
D-12	InSight Online, July 9, 1999	102
D-13	PowerPoint Slides, July 1999	125
D-19	Conectiv Retirement Plan, Cash Balance Sub-Plan, Summary Plan Description	126
D-22	Introducing the New Cash Balance Retirement Plan, Conectiv	109

Page 3

1 I N D E X

WITNESS	PAGE
JAMES R. KREMMEL	
By Mr. Malone	5,179
By Ms. Yu	176

7 E X H I B I T S

NUMBER	DESCRIPTION	PAGE
P-1	Notice of Deposition	13
P-2	Minutes of the Personnel and Compensation Committee, April 23, 1998	30
P-3	Facts Newsletter, MWW00229-00232	35
P-4	PowerPoint Slides, MWW00301-00307	112
P-5	Conectiv Retirement Plan	129
P-6	B L England Management Enhanced Severance Plan	133
P-7	Pepco Holdings, Inc. General Release, Gene T. Carey	137
P-8	Cash Balance Account Statement, Jerome M. Charles, Jan. 1, 2000-Dec. 31, 2000	139
P-9	Conectiv Retirement Plan	145
P-10	Part One, Conectiv Cash Balance Sub-Plan, Effective Jan. 1, 1999	146
P-11	Form 10-Q, Sept. 30, 2006	148
P-12	Declaration of James R. Kremmel	153
P-13	Atlantic Electric Employee Retirement Plan	172

Page 5

1 (It is hereby stipulated and agreed  
2 by and among counsel that sealing, certification  
3 and filing are waived;  
4 It is further stipulated and agreed  
5 by and among counsel that all objections, except as  
6 to the form of the question, are reserved until the  
7 time of trial.)

8 JAMES R. KREMMEL, after having been  
9 first duly sworn, was examined and testified as  
10 follows:  
11 EXAMINATION  
12 BY MR. MALONE:

13 Q. Good morning, Mr. Kremmel. My name  
14 is Jim Malone, and I represent the Plaintiffs in a  
15 case against Pepco Holdings, Inc. and Conectiv, and  
16 I'm going to be asking you a few questions today as  
17 part of that litigation.

18 Mr. Fallon is going to take down my  
19 questions, your responses. We can't talk at the  
20 same time. He's very quick with his fingers, he's  
21 very agile, but he can't deal with that, so you  
22 have to try and let me finish my question, even if  
23 you think you know where I'm going, and I have to  
24 try and let you finish your response, even though I

2 (Pages 2 to 5)

JAMES R. KREMME

<p style="text-align: right;">Page 6</p> <p>1 think I know what you are going to say.  2 It's important that you understand  3 my question. If you don't understand my question  4 because I'm inarticulate, tell me, and I'll try and  5 give you a better question. If you don't hear the  6 question, I can repeat it or Sean can read it back  7 for you, but, at the end of the day your testimony  8 will be transcribed and, if you answer a question,  9 everyone is going to look at that and assume that  10 you heard it, understood it, and are answering to  11 the best of your knowledge.  12 The other thing you can't do is what  13 you are doing right now. Nodding your head,  14 shaking your head, um-hum, uh-huh. You have to  15 verbalize a response, yes, no, maybe, whatever  16 explanation you need to give.  17 Have you been deposed before?  18 A. Yes, I have.  19 Q. How many times?  20 A. That I -- twice, that I can recall.  21 Q. What kind of matters did they  22 involve?  23 A. Matters involving claims, from a  24 benefits administration standpoint, in previous</p>	<p style="text-align: right;">Page 8</p> <p>1 is that correct?  2 A. That's correct.  3 Q. And they are in Columbus?  4 A. Columbus, Ohio, yes.  5 Q. And you left that position in 1988  6 to go the Raytheon?  7 A. Yes.  8 Q. Also as an industrial hygienist?  9 A. Yes.  10 Q. This is probably a good point to ask  11 you what an industrial hygienist does.  12 A. Industrial hygiene is a science  13 associated with health and safety in the workplace.  14 It's mainly -- focuses on air quality, noise and  15 other environmental factors in the workplace.  16 Q. OSHA compliance?  17 A. Yes.  18 Q. You left Raytheon in 1990 to go to  19 Delmarva Power?  20 A. That's correct.  21 Q. And that was your first position at  22 that company?  23 A. Yes, it was.  24 Q. And that was as an industrial</p>
<p style="text-align: right;">Page 7</p> <p>1 roles.  2 Q. Now, you graduated from Juniata  3 College in 1982, is that correct?  4 A. That's correct.  5 Q. And you had a B.S. in biology?  6 A. That's correct.  7 Q. You have an M.B.A. from Capital  8 University, is that correct?  9 A. That's correct.  10 Q. 1989?  11 A. Or thereabouts, yes.  12 Q. Did you go while you were working or  13 did you -- were you full time?  14 A. It was an evening program. I was  15 working full time.  16 Q. Starting in 1983 you worked as an  17 industrial hygienist for the State of Ohio, is that  18 correct?  19 A. Yes.  20 Q. And you stayed in that position  21 until 1986?  22 A. Yes.  23 Q. And in 1986 you took a position as  24 an industrial hygienist at American Electric Power,</p>	<p style="text-align: right;">Page 9</p> <p>1 hygienist?  2 A. Yes.  3 Q. And then in 1994 you became an  4 employee relations specialist, is that correct?  5 A. That's correct.  6 Q. And you held that position until  7 1998?  8 A. Correct.  9 Q. How did your role change when you  10 shifted from being an industrial hygienist to being  11 an employee relations specialist?  12 A. An employee relations specialist for  13 Delmarva was responsible for working around  14 employee matters and union issues around the  15 Collective Bargaining Agreements that were in place  16 between Delmarva and the different unions that  17 represented the unionized workforce.  18 Q. Was it a promotion?  19 A. It was a promotion, yes.  20 Q. Did you have people working that you  21 supervised?  22 A. Not initially, no.  23 Q. Then in 1998 you became an employee  24 relations specialist at Conectiv, is that correct?</p>

3 (Pages 6 to 9)

JAMES R. KREMME

<p style="text-align: right;">Page 10</p> <p>1 A. I believe that's correct, yes.</p> <p>2 Q. Did you receive any kind of training</p> <p>3 as you moved from the industrial hygiene to</p> <p>4 employee relations specialty?</p> <p>5 A. Yes.</p> <p>6 Q. Could you summarize it briefly for</p> <p>7 me?</p> <p>8 A. Combination of on-the-job training</p> <p>9 and technical training. Conferences, seminars.</p> <p>10 Q. Do you -- did you finish your</p> <p>11 response?</p> <p>12 A. Yes, I did.</p> <p>13 Q. Do you belong to any professional</p> <p>14 societies?</p> <p>15 A. Presently?</p> <p>16 Q. Yes.</p> <p>17 A. Yes. World At Work.</p> <p>18 Q. Any others?</p> <p>19 A. Not to my recollection. I believe</p> <p>20 that's the only one right now.</p> <p>21 Q. Fair enough.</p> <p>22 What was your next position after</p> <p>23 you were an employee relations specialist at</p> <p>24 Conectiv?</p>	<p style="text-align: right;">Page 12</p> <p>1 A. It is a full-time salaried position.</p> <p>2 Q. How would you describe your job to</p> <p>3 someone who was unfamiliar with it?</p> <p>4 A. My present job?</p> <p>5 Q. Um-hum, your present job.</p> <p>6 A. I manage executive compensation</p> <p>7 programs for PHI and also special projects for PHI,</p> <p>8 for the vice-president of people, strategy and</p> <p>9 human resources.</p> <p>10 Q. I'd like to focus your attention on</p> <p>11 the period 1998 and 1999 and your role at what was</p> <p>12 then Conectiv.</p> <p>13 Did you have employees working for</p> <p>14 you and reporting to you at that time?</p> <p>15 A. For part of that period, yes.</p> <p>16 Q. Who were they?</p> <p>17 A. Initially, as benefits manager --</p> <p>18 this would have been after I was promoted to</p> <p>19 benefits manager for Conectiv -- I had one</p> <p>20 individual that I recall reporting to me. His name</p> <p>21 was Alan Beattie.</p> <p>22 Q. And to whom did you report in the</p> <p>23 period, say, between '97 and '99?</p> <p>24 A. I reported to John Zimmerman.</p>
<p style="text-align: right;">Page 11</p> <p>1 A. To my recollection, I was benefits</p> <p>2 manager for Conectiv.</p> <p>3 Q. And that was from 1999 to 2001?</p> <p>4 A. I believe that's correct, yes.</p> <p>5 Q. And then you became compensation</p> <p>6 manager?</p> <p>7 A. Yes. That would have been my next</p> <p>8 role.</p> <p>9 Q. And how long did you hold that</p> <p>10 position?</p> <p>11 A. I was compensation manager for</p> <p>12 Conectiv from 2001 through the merger with Pepco in</p> <p>13 August of 2002.</p> <p>14 Q. And, after August, 2002, what</p> <p>15 position did you assume?</p> <p>16 A. I was manager of compensation for</p> <p>17 Pepco Holdings.</p> <p>18 Q. And is that your current position?</p> <p>19 A. No.</p> <p>20 Q. What's your current position?</p> <p>21 A. My current position is principal</p> <p>22 consultant for Pepco Holdings.</p> <p>23 Q. Is that a full-time salaried</p> <p>24 position?</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. And what was Mr. Zimmerman's</p> <p>2 position?</p> <p>3 A. Mr. -- it -- Mr. Zimmerman's</p> <p>4 position changed during that period.</p> <p>5 Q. What was his first position during</p> <p>6 that time period?</p> <p>7 A. Mr. Zimmerman was manager of</p> <p>8 employee relations for Delmarva Power, then</p> <p>9 Conectiv, and then it changed to manager of</p> <p>10 compensation and benefits for Conectiv.</p> <p>11 Q. And, during the time frame 1997 to</p> <p>12 1999, to whom did Mr. Zimmerman report?</p> <p>13 A. Mr. Zimmerman reported to Don Cain,</p> <p>14 who was the vice-president of human resources.</p> <p>15 Q. C-a-i-n?</p> <p>16 A. C-a-i-n.</p> <p>17 Q. Now, is Mr. Zimmerman still with the</p> <p>18 company?</p> <p>19 A. He is not.</p> <p>20 Q. And Mr. Cain has left, as well?</p> <p>21 A. That's correct.</p> <p>22 MR. MALONE: Plaintiffs-1, please.</p> <p>23 (Exhibit P-1 is marked for</p> <p>24 identification.)</p>

4 (Pages 10 to 13)



JAMES R. KREMMELE

<p style="text-align: right;">Page 14</p> <p>1 BY MR. MALONE:</p> <p>2 Q. Mr. Kremmel, the court reporter has</p> <p>3 handed you a document which we've marked</p> <p>4 Plaintiffs-1 for identification purposes today.</p> <p>5 Have you seen this before?</p> <p>6 A. Yes, I have.</p> <p>7 Q. Do you understand that you are</p> <p>8 appearing today as a designee on behalf of your</p> <p>9 employer to answer questions on certain subject</p> <p>10 matters?</p> <p>11 A. Yes, I do.</p> <p>12 Q. And are you prepared to do so today?</p> <p>13 A. I'm prepared to do so, to the best</p> <p>14 of my ability.</p> <p>15 Q. That's all we can ask of you, sir.</p> <p>16 Thank you.</p> <p>17 MS. YU: Jim, I have a question for</p> <p>18 you.</p> <p>19 MR. MALONE: Sure.</p> <p>20 MS. YU: It says, "Plaintiffs'</p> <p>21 Amended Notice."</p> <p>22 MR. MALONE: That's correct.</p> <p>23 MS. YU: Is this the one that we</p> <p>24 received? I don't recall receiving this.</p>	<p style="text-align: right;">Page 16</p> <p>1 October of 1997?</p> <p>2 A. I don't recall whether I did or</p> <p>3 didn't.</p> <p>4 Q. Do you know who prepared</p> <p>5 Defendants-1?</p> <p>6 A. Who, individually?</p> <p>7 Q. Yes.</p> <p>8 A. No.</p> <p>9 Q. Do you know who approved it and</p> <p>10 authorized that it be disseminated in some fashion?</p> <p>11 A. No, I don't know who directly</p> <p>12 approved it.</p> <p>13 Q. On the first page, in the left-hand</p> <p>14 column, the name Ben Wilkinson appears.</p> <p>15 Do you see that, sir?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know Mr. Wilkinson?</p> <p>18 A. I know who Ben Wilkinson was, yes.</p> <p>19 Q. What was his position in or about</p> <p>20 October, 1997, as you understood it?</p> <p>21 A. I believe Ben's position was manager</p> <p>22 of compensation and benefits.</p> <p>23 Q. And, in that capacity, did you work</p> <p>24 with him at all?</p>
<p style="text-align: right;">Page 15</p> <p>1 MR. MALONE: Off the record for a</p> <p>2 second.</p> <p>3 (Discussion is held off the record.)</p> <p>4 MR. MALONE: To the extent I can,</p> <p>5 I'm going to try to reuse things that you've</p> <p>6 already marked and, so, I will occasionally be</p> <p>7 giving him D-1, D-7, and so forth.</p> <p>8 BY MR. MALONE:</p> <p>9 Q. Let's start with D-1. Mr. Kremmel,</p> <p>10 I've handed you what we've previously marked as</p> <p>11 Defendants-1 for identification. It's a document</p> <p>12 headed "EMerging Times." Bears a date of</p> <p>13 October 13, 1997.</p> <p>14 Why don't you take a moment to</p> <p>15 review it and see if it's familiar to you.</p> <p>16 A. It is familiar to me, yes.</p> <p>17 Q. Now, in October of 1997, had the</p> <p>18 merger that formed Conectiv been finalized?</p> <p>19 A. No, I do not believe it was. No.</p> <p>20 Q. And, hence, in the upper left-hand</p> <p>21 corner we see, "We are becoming Conectiv," is that</p> <p>22 correct?</p> <p>23 A. That's correct, yes.</p> <p>24 Q. Did you receive a copy of this in</p>	<p style="text-align: right;">Page 17</p> <p>1 A. Yes, I did.</p> <p>2 Q. How did you interact with Mr.</p> <p>3 Wilkinson in this rough time period of October of</p> <p>4 1997?</p> <p>5 A. I was a member of the overall</p> <p>6 project team that was responsible for implementing</p> <p>7 the new -- company's new Total Rewards program.</p> <p>8 Q. What did the Total Rewards program</p> <p>9 involve?</p> <p>10 A. The -- it was an overall redesign of</p> <p>11 the compensation and benefits programs for what</p> <p>12 would be the new company, Conectiv.</p> <p>13 Q. So, that embraced health plans,</p> <p>14 pension plans, holidays, vacation schedules, pay</p> <p>15 structures?</p> <p>16 A. Essentially, yes.</p> <p>17 Q. Anything else that I've left out?</p> <p>18 A. I think you've got the majority of</p> <p>19 it.</p> <p>20 Q. And did you have any particular</p> <p>21 role, what your duties were, as part of the Total</p> <p>22 Rewards team?</p> <p>23 A. As a team member, as part of the</p> <p>24 project team. No special responsibilities, other</p>

5 (Pages 14 to 17)

JAMES R. KREMMELE

<p style="text-align: right;">Page 18</p> <p>1 than as part of the team helping to facilitate the 2 initiative.</p> <p>3 Q. Focusing on Exhibit D-1 for a 4 moment, do you know how that was issued to the 5 workforce?</p> <p>6 A. This individual communication, I 7 believe, was distributed in a hard copy, printed 8 internally by the company's general printing group, 9 and then distributed to employees.</p> <p>10 Q. Was it aimed at any particular 11 category of employees or was it everyone that was 12 drawing a paycheck?</p> <p>13 A. This communication, I believe, was 14 targeted to all employees in the company, sir.</p> <p>15 Q. Thank you, sir. Let's go to 16 Defendants-2.</p> <p>17 Mr. Kremmel, I've handed you a 18 document which was previously marked as 19 Defendants-2. It's a similar newsletter. This one 20 bearing the date, October 20th, 1997.</p> <p>21 I'd ask you to take a moment to 22 review it and see if it is familiar to you.</p> <p>23 A. It is similar, yes, sir.</p> <p>24 Q. Do you know who was responsible for</p>	<p style="text-align: right;">Page 20</p> <p>1 that a cash balance pension plan was under 2 consideration?</p> <p>3 A. Are you looking for a date, sir?</p> <p>4 Q. You can give me your best estimate. 5 I don't want you to guess or speculate, but, if you 6 have a rough sense --</p> <p>7 A. I do not recall the first time that 8 I had knowledge that we were considering a cash 9 balance plan.</p> <p>10 Q. Do you know when the decision was 11 finalized that a cash balance plan would be 12 adopted?</p> <p>13 A. Yes, I do.</p> <p>14 Q. And, to the best of your 15 recollection, when was that?</p> <p>16 A. To the best of my recollection, it 17 would have been at a meeting of the Board of 18 Directors of Conectiv in -- I don't recall the 19 month -- March or April of 2000 -- or, excuse me, 20 1998.</p> <p>21 Q. Mr. Kremmel, I've handed you a 22 document which has been marked previously as 23 Defendants-3. It appears to me to be presentation 24 materials. On the first page it says, "Conectiv</p>
<p style="text-align: right;">Page 19</p> <p>1 authoring this?</p> <p>2 A. Who, directly?</p> <p>3 No, I do not.</p> <p>4 Q. Was there anyone who was on the 5 Total Rewards team that was particularly tasked 6 with handling employee communications?</p> <p>7 A. Not individually, to the best of my 8 recollection.</p> <p>9 Q. Did you receive a copy of 10 Defendants-2 in or about October of 1997?</p> <p>11 A. I do not recall personally.</p> <p>12 Q. As part of your work on the Total 13 Rewards team, did you come to form an understanding 14 that one element of the potential changes would be 15 a cash balance pension plan?</p> <p>16 A. Could you repeat the question, 17 please?</p> <p>18 MR. MALONE: Can you read that back. 19 I think I botched it. 20 (Pertinent portion of the record is 21 read.)</p> <p>22 THE WITNESS: Yes, I did.</p> <p>23 BY MR. MALONE:</p> <p>24 Q. When did it come to your attention</p>	<p style="text-align: right;">Page 21</p> <p>1 Cash Balance Plan, February 20, 1998."</p> <p>2 Why don't you take a moment to 3 review it and then I'll ask you a few questions 4 about it.</p> <p>5 A. Okay.</p> <p>6 Q. Have you seen Defendants-3 7 previously?</p> <p>8 A. Yes, I have.</p> <p>9 Q. To the best of your recollection, 10 when was the first time that you saw Defendants-3?</p> <p>11 A. To the best of my recollection, it 12 would have been earlier this year, sir, sometime 13 after the first of this year.</p> <p>14 Q. Let me direct your attention to the 15 lower right-hand corner above the exhibit marking.</p> <p>16 A. Okay.</p> <p>17 Q. There is a logo there.</p> <p>18 A. Yes.</p> <p>19 Q. Do you recognize the logo?</p> <p>20 A. I believe that's the logo of the 21 firm of Watson Wyatt.</p> <p>22 Q. And Watson Wyatt is an actuarial 23 consulting firm, is that correct?</p> <p>24 A. I believe that's correct.</p>

6 (Pages 18 to 21)

JAMES R. KREMMELE

<p style="text-align: right;">Page 22</p> <p>1 Q. Are they currently the plan's 2 actuaries? 3 A. They are currently the plan's 4 actuaries. 5 Q. In or about 1998, who were the 6 actuaries for Delmarva and Atlantic City Electric? 7 A. I can speak to the actuary for 8 Delmarva Power -- 9 Q. Okay. 10 A. -- which was the firm of Towers 11 Perrin. 12 Q. Okay. 13 A. I'm not sure that I know who the 14 actuary, at the time, for Atlantic Electric was, 15 sir. 16 Q. After the Atlantic City Electric 17 plan and the Delmarva plans were merged, Towers 18 Perrin served as the actuary for a number of years, 19 is that correct? 20 A. After the closing of the merger 21 with -- between Atlantic and Delmarva, Towers 22 Perrin was the actuary for Conectiv. 23 Q. In or about 1998, do you know what 24 services, if any, Watson Wyatt was providing to</p>	<p style="text-align: right;">Page 24</p> <p>1 services in the design of the retirement plans. 2 Q. Were you working with him on the 3 design of the new retirement plan? 4 A. No. 5 Q. Did you have any direct working 6 relationship, in or around 1998, with 7 representatives of Watson Wyatt? 8 A. Yes. 9 Q. How would you describe your role? 10 A. I was part of -- I previously 11 mentioned I was part of the Total Rewards project 12 team. Watson Wyatt would attend those meetings and 13 I -- we would have had -- I know I would have had 14 conversations with them as part of that -- as part 15 of the project team. 16 Q. Do you know who prepared Defendants 17 Exhibit 3? 18 A. Other than it's work product of 19 Watson Wyatt, I do not know who individually 20 prepared it, no. 21 Q. Do you have an understanding as to 22 who, at Delmarva, Atlantic City Electric, or 23 Conectiv, was the intended recipient of 24 Defendants-3?</p>
<p style="text-align: right;">Page 23</p> <p>1 Delmarva or Atlantic City Electric? 2 A. I do. 3 Q. And what were they? 4 A. They were supporting Conectiv, or 5 what would be Conectiv, in the design of components 6 of the Total Rewards program. 7 Q. Which particular components? 8 A. One of which I know was a redesign 9 of the company's retirement plans. 10 Q. Did you have any direct interaction 11 with representatives of Watson Wyatt in or about 12 1998? 13 A. Yes. 14 Q. Who did you deal with from Watson 15 Wyatt? 16 A. I recall one individual that I had 17 worked with. His name was -- or is David Speier. 18 Q. Can you spell the last name, please. 19 A. To the best of my recollection, it 20 is S-p-i-e -- or e-i-e-r. S-p-e-i-e-r. 21 Q. Thank you. 22 And what did you understand Mr. 23 Speier's function to be? 24 A. David was providing consultative</p>	<p style="text-align: right;">Page 25</p> <p>1 A. I do not know who, specifically, 2 this was prepared for, no. 3 Q. Is this something that was provided 4 to the employees as a group? 5 A. Not to the best of my recollection, 6 sir. 7 Q. Let me direct your attention, if I 8 might, to the fourth physical page of Defendants-3. 9 MS. HOFFMAN: Is that the one 10 labeled JMC 00447? 11 MR. MALONE: Yes, it is. 12 BY MR. MALONE: 13 Q. Should have a heading, "Cash Balance 14 Plan Example," and then, "Pay credits, 8 percent." 15 Do you have that, sir? 16 A. I'm with you, yes. 17 Q. Do you see the handwriting on the 18 page? 19 A. I do. 20 Q. Do you recognize the handwriting? 21 A. I do not. 22 Q. Let me have you turn two pages in to 23 JMC 00449. Still in Defendants-3. There is a 24 graph there.</p>

7 (Pages 22 to 25)

JAMES R. KREMMELE

<p style="text-align: right;">Page 26</p> <p>1 Do you see that, sir?</p> <p>2 A. I do see the graph, yes.</p> <p>3 Q. Do you have some understanding of</p> <p>4 what the purpose of this data presentation was?</p> <p>5 A. I have a general understanding.</p> <p>6 Q. What's your understanding?</p> <p>7 A. I think what the graph is attempting</p> <p>8 to show is the growth in the value of a pension</p> <p>9 benefit over time using certain assumptions.</p> <p>10 Q. And there is a footnote on the graph</p> <p>11 that identifies a salary increase assumption, is</p> <p>12 that correct?</p> <p>13 A. Yes.</p> <p>14 Q. Do you know what the source of that</p> <p>15 assumption was?</p> <p>16 A. I do not.</p> <p>17 Q. Let me turn, in Defendants-3, to JMC</p> <p>18 00455.</p> <p>19 A. 455?</p> <p>20 Q. Yes. You'll have a page headed, "5</p> <p>21 Year Grandfather Provision."</p> <p>22 Do you have that before you?</p> <p>23 A. I do.</p> <p>24 Q. Do you have an understanding of what</p>	<p style="text-align: right;">Page 28</p> <p>1 A. Did Conectiv?</p> <p>2 Q. Have a defined benefit pension plan</p> <p>3 that was in effect as of January 1, 1999?</p> <p>4 A. I don't believe it did, no.</p> <p>5 Q. Did it subsequently come to have a</p> <p>6 defined benefit pension plan?</p> <p>7 A. Did Conectiv have a defined benefit</p> <p>8 pension plan?</p> <p>9 Q. Yes.</p> <p>10 A. As of 1-1-99, Conectiv had a cash</p> <p>11 balance plan.</p> <p>12 Q. So you would distinguish a cash</p> <p>13 balance plan from a defined benefit plan?</p> <p>14 A. I'm not sure that I'm technically</p> <p>15 qualified to know necessarily what the definition</p> <p>16 of a defined plan is and whether the cash balance</p> <p>17 fits that definition.</p> <p>18 Q. That's fine.</p> <p>19 Let me go back and unpack that and</p> <p>20 see if I can clean this mess up I made by using</p> <p>21 technical jargon.</p> <p>22 A. Okay.</p> <p>23 Q. Atlantic City Electric had a pension</p> <p>24 plan and Delmarva had a pension plan prior to the</p>
<p style="text-align: right;">Page 27</p> <p>1 the graph here is intended to convey?</p> <p>2 A. I believe it's similarly showing</p> <p>3 accumulation of pension benefits over time, based</p> <p>4 on certain assumptions.</p> <p>5 Q. And this compares different benefit</p> <p>6 designs, is that correct?</p> <p>7 A. I'm not sure how -- I'm not sure I</p> <p>8 understand your question.</p> <p>9 Q. Let's do it this way. Prior to the</p> <p>10 time that the merger that created Conectiv closed,</p> <p>11 Atlantic City Electric had its own defined benefit</p> <p>12 plan, is that correct?</p> <p>13 A. That is correct.</p> <p>14 Q. And Delmarva had its own defined</p> <p>15 benefit plan, is that correct?</p> <p>16 A. That is correct.</p> <p>17 Q. And those two were subsequently</p> <p>18 merged to create the Conectiv retirement plan, is</p> <p>19 that correct?</p> <p>20 A. No, I'm not sure that is correct,</p> <p>21 sir.</p> <p>22 Q. As of January 1, 1999, did Conectiv</p> <p>23 have a defined benefit retirement plan for its</p> <p>24 management employees, i.e., nonunionized?</p>	<p style="text-align: right;">Page 29</p> <p>1 merger, is that correct?</p> <p>2 A. That is correct.</p> <p>3 Q. And, after the merger that created</p> <p>4 Conectiv went into effect, those two pension plans</p> <p>5 were merged to create a new pension plan, is that</p> <p>6 correct?</p> <p>7 A. I don't believe that's correct, no.</p> <p>8 Q. Effective January 1, 1999, Conectiv</p> <p>9 had a cash balance plan covering certain of its</p> <p>10 employees?</p> <p>11 A. Is that a question?</p> <p>12 Q. Yes.</p> <p>13 A. What's the question?</p> <p>14 Q. Is it correct that, as of January 1,</p> <p>15 1999, Conectiv had a cash balance plan covering</p> <p>16 certain of its employees?</p> <p>17 A. That's correct.</p> <p>18 Q. Did it provide for grandfathering of</p> <p>19 certain employees?</p> <p>20 A. It did.</p> <p>21 Q. Was it a five-year grandfather</p> <p>22 provision?</p> <p>23 A. No, I do not believe it was.</p> <p>24 Q. Okay.</p>

8 (Pages 26 to 29)

JAMES R. KREMME

<p style="text-align: right;">Page 30</p> <p>1 Were you privy to any of the</p> <p>2 discussions over whether it should be five-year</p> <p>3 grandfathering or ten-year grandfathering or some</p> <p>4 other basis?</p> <p>5 A. Not that I recall, sir.</p> <p>6 MR. MALONE: Could you mark that as</p> <p>7 Plaintiffs-2.</p> <p>8 (Exhibit P-2 is marked for</p> <p>9 identification.)</p> <p>10 BY MR. MALONE:</p> <p>11 Q. The court reporter has handed you a</p> <p>12 document which we've marked Plaintiffs-2 for</p> <p>13 identification purposes. The first page is headed</p> <p>14 "Conectiv Minutes of the Personnel and Compensation</p> <p>15 Committee," and bears the date of April 23, 1998.</p> <p>16 Why don't you take a moment to</p> <p>17 review Plaintiffs-2 and then I'll ask you a few</p> <p>18 questions about it.</p> <p>19 A. Okay, I'm ready, sir.</p> <p>20 Q. Have you seen Plaintiffs-2 before?</p> <p>21 A. Yes, I have.</p> <p>22 Q. When do you first recall seeing</p> <p>23 Plaintiffs-2?</p> <p>24 A. I recall first seeing it -- would</p>	<p style="text-align: right;">Page 32</p> <p>1 A. I don't recall discussing the</p> <p>2 meeting.</p> <p>3 Q. How about Mr. Wilkinson?</p> <p>4 A. Nor do I recall.</p> <p>5 Q. Did you offer any assistance to them</p> <p>6 in preparing for a meeting with a committee of the</p> <p>7 board to discuss the cash balance plan?</p> <p>8 A. Not to my recollection.</p> <p>9 Q. You were working as part of the</p> <p>10 Total Rewards team in April, 1998, is that correct?</p> <p>11 A. Yes, I was.</p> <p>12 Q. Did you help either Mr. Cain or Mr.</p> <p>13 Wilkinson prepare for any meeting with a committee</p> <p>14 of the board as part of that work?</p> <p>15 A. I do not recall directly assisting</p> <p>16 in that -- them in that, no. No, I do not.</p> <p>17 Q. Did you discuss with Mr. Wilkinson</p> <p>18 or Mr. Cain their preparation for such a meeting?</p> <p>19 A. I do not recall any such</p> <p>20 conversations.</p> <p>21 Q. Let me direct your attention to the</p> <p>22 second page of Plaintiffs-2, which bears the</p> <p>23 designation PHI 1585. I'd like to focus your</p> <p>24 attention on the first full paragraph, which starts</p>
<p style="text-align: right;">Page 31</p> <p>1 have been probably late April, 1998, is when I</p> <p>2 would have first seen this document.</p> <p>3 Q. And we had discussed earlier the</p> <p>4 timing when the decision to go forward with the</p> <p>5 cash balance plan was made, and I think, to</p> <p>6 summarize your testimony -- not put words in your</p> <p>7 mouth -- you had suggested that March or April was</p> <p>8 the relevant time frame when the final decision to</p> <p>9 adopt the cash balance plan was made.</p> <p>10 Does this refresh your recollection</p> <p>11 as to the timing of that decision?</p> <p>12 A. Yes, it does.</p> <p>13 Q. To your understanding, is</p> <p>14 Plaintiffs-2 minutes summarizing the meeting at</p> <p>15 which the decision to adopt the cash balance design</p> <p>16 was made?</p> <p>17 A. That's my understanding, yes.</p> <p>18 Q. Let me direct your attention to --</p> <p>19 Mr. Cain and Mr. Wilkinson are listed in the</p> <p>20 minutes.</p> <p>21 Do you see that?</p> <p>22 A. Yes, I do.</p> <p>23 Q. Did you discuss the meeting that is</p> <p>24 summarized in Plaintiffs-2 with Mr. Cain?</p>	<p style="text-align: right;">Page 33</p> <p>1 "Mr. Wilkinson stated that the long-term goal of</p> <p>2 management."</p> <p>3 Do you see that, sir?</p> <p>4 A. Yes, I do.</p> <p>5 Q. Were you familiar with what the</p> <p>6 overall goals management had for benefit costs were</p> <p>7 in or about April of 1998?</p> <p>8 A. I recall these numbers.</p> <p>9 Q. They seem accurate to you?</p> <p>10 A. Yes, they do.</p> <p>11 Q. Would those numbers represent an</p> <p>12 increase or decrease from the existing cost</p> <p>13 structure?</p> <p>14 A. To the best of my recollection, it</p> <p>15 was -- it was approximately equal to the existing</p> <p>16 cost structure. To the best of my recollection.</p> <p>17 Q. Let me direct your attention to what</p> <p>18 appears to be an attachment to the minutes which</p> <p>19 are P-2. It starts at 1588. The document entitled</p> <p>20 "Conectiv Compensation and Benefits."</p> <p>21 Do you know who authored this?</p> <p>22 A. Ben Wilkinson's name is on the</p> <p>23 document, so I would presume it was prepared by Mr.</p> <p>24 Wilkinson.</p>

9 (Pages 30 to 33)



JAMES R. KREMMELE

<p style="text-align: right;">Page 34</p> <p>1 Q. Did you assist Mr. Wilkinson in any 2 way in preparing this attachment to P-2? 3 A. Not that I recall, sir. 4 Q. Okay. 5 Let me direct your attention to Page 6 PHI 1589. At the bottom third of the page there is 7 a header for a Cash Balance Plan and then a series 8 of bullet points. 9 Do you see that, sir? 10 A. Yes, I do. 11 Q. The last bullet point has two 12 indented bullet points on it, at the bottom of the 13 page. "Business Link, Useful in Divestitures, Can 14 be Differentiated by SBU." 15 Do you see that, sir? 16 A. Yes, I do. 17 Q. Do you have any understanding of 18 what aspect of the cash balance plan might have 19 made it useful in divestitures? 20 A. I don't know what was intended by 21 this. I could hypothesize, but I don't know what 22 specifically -- 23 Q. I'm asking you specifically if you 24 know.</p>	<p style="text-align: right;">Page 36</p> <p>1 identification.) 2 BY MR. MALONE: 3 Q. Mr. Kremmel, the court reporter has 4 handed you a document we marked Plaintiffs Exhibit 5 3 for identification purposes. It's headed, 6 "Facts, We are Becoming Conectiv." 7 Ask you to take a moment to review 8 it and then I'll ask you a few questions about it. 9 A. Okay, I'm ready. 10 Q. Have you seen this before? 11 A. Yes, I have. 12 Q. When, approximately, do you first 13 recall seeing it? 14 A. I don't recall when I first recalled 15 seeing it. Most recently I saw it sometime after 16 the first of the year 2007. 17 Q. Can you tell me who was responsible 18 for creating Plaintiffs-3? 19 A. Who specifically was responsible? 20 I don't know, sir. 21 Q. Did you have any role in creating 22 Plaintiffs Exhibit 3 as part of your work on the 23 Total Rewards team? 24 A. I may have, yes.</p>
<p style="text-align: right;">Page 35</p> <p>1 A. Well, the concept of the cash 2 balance benefit is the ability to provide a benefit 3 that is -- that accrues over the life of the 4 benefit and is portable for the individual 5 participant. And from -- in that context, from a 6 divestiture standpoint, it would provide a benefit 7 that provided value to an individual in the event 8 that a business unit was sold. 9 Q. And then the next reference is -- 10 there is a phrase, "Can be differentiated by SBU." 11 Do you know what that means? 12 A. Again, while I'm not sure that I 13 understand the original context, you know, 14 hypothetically, the intention -- again, one of the 15 values of the plan was that we could utilize it 16 in -- in different units and -- you know, and have 17 the ability to have the benefit -- tailor the 18 benefit to the individual company to, again, 19 provide us the ability to attract and retain the 20 best talent within those businesses that the 21 company might acquire. 22 MR. MALONE: That's all I have for 23 you on Plaintiffs-2. 24 (Exhibit P-3 is marked for</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. But you can't recall? 2 A. I don't recall specifically what 3 that was. 4 Q. Can you tell me approximately when 5 this document was created? 6 A. Sir, you asked when -- approximately 7 when it was created. I would approximately guess 8 that it was sometime in early 1998. 9 Q. You used a word there I don't like. 10 "Guess." 11 A. Ask your question again. 12 Q. To the best of your ability today, 13 would you estimate that this was created in or 14 about early 1998? 15 A. To the best of my recollection, yes. 16 Q. And on what do you base that 17 recollection or inference? 18 A. The context of the document. 19 Q. Specifically, the first sentence? 20 A. The overall context of the document. 21 Q. Do you know whether this was 22 something that was disseminated broadly to 23 employees or was tailored to a particular audience? 24 A. I believe this document was -- the</p>

10 (Pages 34 to 37)



JAMES R. KREMME

<p style="text-align: right;">Page 38</p> <p>1 audience for this document was the nonrepresented 2 employees in Atlantic and Delmarva at the time. 3 Q. And, by "nonrepresented," you mean 4 those that are not unionized? 5 A. Not represented by a Collective 6 Bargaining Agreement, yes. 7 Q. Do you know how it was disseminated? 8 A. From it's appearance, sir, this 9 appears to, again, have been -- would have been 10 printed by the company and distributed hard copy. 11 That's my -- that's how I believe it was 12 distributed. 13 Q. Do you recall if you got a copy of 14 this in or about early 1998? 15 A. I don't specifically recall, no. 16 Q. Do you have an understanding what 17 the purpose of disseminating Plaintiffs-3 was? 18 A. Yes. 19 Q. What was the purpose, to your 20 understanding? 21 A. As part of the ongoing broad 22 communications to the employees of the company 23 about the roll-out of the new Total Rewards 24 program. This was just one of the many components</p>	<p style="text-align: right;">Page 40</p> <p>1 conclusion? 2 A. Because, on the last page, which is 3 PHI 0033, at least on my copy -- there may be a 4 last digit that's missing -- 5 Q. It's cut off there. 6 A. In any case, the top of the page 7 reads "Total Rewards Communication Plan." This is 8 just a partial extract of the overall 9 communications plan for the Total Rewards program 10 and identifies this as the third Facts Newsletter 11 and that it would be distributed in April or May of 12 1998. 13 Q. And if I could send you back to 14 Plaintiffs-3 for a minute, which was the last 15 document we were looking at, Plaintiffs-3 was 16 issued prior to Defendants-5, is that correct? 17 A. That would be -- to the best of my 18 knowledge, I believe that's correct, yes. 19 Q. Let's go back to Defendants-5. 20 That's the only question I have for you on 21 Plaintiffs-3. 22 We were looking at a timeline on the 23 last physical page of Defendants-5. And this 24 timeline -- first, to your knowledge, does it</p>
<p style="text-align: right;">Page 39</p> <p>1 that were rolled out as part of those 2 communications. 3 Q. I'm handing you, sir, what we 4 previously marked as Defendants Exhibit 5 for 5 identification purposes. This is another document 6 known as Facts, F-a-c-t-s. 7 A. Okay, I'm prepared. 8 Q. Have you seen it before? 9 A. Yes, I have. 10 Q. To the best of your recollection, 11 what's the first time that you saw Defendants-5? 12 A. It would have been in April of 1998. 13 Q. And do you know when this document 14 was issued? 15 This document being D-5. 16 A. The specific date? I do not. 17 Q. Are you able to give me some 18 reasonable estimate, based on your knowledge, of 19 when it was issued? 20 A. Yes, I am. 21 Q. Could you do so, please. 22 A. It would have been sometime in April 23 or May of 1998. 24 Q. And what leads you to draw that</p>	<p style="text-align: right;">Page 41</p> <p>1 appear reasonably accurate? 2 A. Yes, it does. 3 Q. It indicates that Defendants-5 is 4 the third Facts Newsletter, is that correct? 5 A. Yes. 6 Q. Okay. 7 Do you know when the first Facts 8 Newsletter was issued? 9 A. Can I look back in the pile? 10 Q. Sure. Absolutely. 11 Let the record reflect that the 12 witness is reviewing some of the documents 13 previously marked either at this deposition or 14 during the deposition of plaintiff. 15 A. Could you repeat your question? 16 MR. MALONE: Can you read it back, 17 Sean. 18 (Pertinent portion of the record is 19 read.) 20 THE WITNESS: I do not know 21 specifically when the first Facts Newsletter was 22 issued, no. 23 BY MR. MALONE: 24 Q. Can you give me a reasonable</p>

11 (Pages 38 to 41)

JAMES R. KREMMEL

<p style="text-align: right;">Page 42</p> <p>1 estimate, to the best of your present recollection?</p> <p>2 A. To the best of my recollection, it</p> <p>3 would have been sometime between -- sometime</p> <p>4 between the fall of 1997 and the spring of 1998.</p> <p>5 Q. Focusing in on Defendants Exhibit 5,</p> <p>6 did you have a role in preparing Defendants-5?</p> <p>7 A. To the best of my recollection, I</p> <p>8 did have a role in preparing this document.</p> <p>9 Q. And what was your role?</p> <p>10 A. As part of the reviewing the content</p> <p>11 of the information as part of the Total Rewards</p> <p>12 team, and preparing it for printing and</p> <p>13 distribution.</p> <p>14 Q. Who was responsible for the overall</p> <p>15 content?</p> <p>16 A. Who ultimately was responsible for</p> <p>17 the overall content?</p> <p>18 Q. Let me withdraw that and try to --</p> <p>19 who wrote it?</p> <p>20 A. I don't recall specifically who</p> <p>21 wrote it.</p> <p>22 Q. Do you remember who you conveyed</p> <p>23 information to for the purposes of preparation of</p> <p>24 D-5?</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. As of April of 1998, who was the</p> <p>2 manager of compensation and benefits?</p> <p>3 A. I believe at that point it was still</p> <p>4 Ben Wilkinson.</p> <p>5 Q. And who was the vice-president of</p> <p>6 human resources? Mr. Cain?</p> <p>7 A. At that point it was Don Cain, yes.</p> <p>8 Q. Anyone else in the chain of command</p> <p>9 that would have been responsible for reviewing and</p> <p>10 approving D-5?</p> <p>11 A. Other than, as I previously</p> <p>12 mentioned, probably at this point most of the</p> <p>13 project team would have seen it -- at least seen</p> <p>14 the draft and had had an opportunity to comment.</p> <p>15 Your question was chain of command.</p> <p>16 There would have been no one else in the chain of</p> <p>17 command that I recall.</p> <p>18 Q. Thank you, sir.</p> <p>19 Do you know how this was</p> <p>20 disseminated?</p> <p>21 A. This would have been, again, printed</p> <p>22 internally by the company and delivered -- this</p> <p>23 individual document was delivered to individuals'</p> <p>24 homes -- it was mailed to their homes.</p>
<p style="text-align: right;">Page 43</p> <p>1 A. I believe -- I guess that's not the</p> <p>2 right way to answer it.</p> <p>3 To the best of my recollection, it</p> <p>4 was individuals with the company's corporate</p> <p>5 communications team that would have supported the</p> <p>6 Total Rewards project team.</p> <p>7 Q. So these were not HR people?</p> <p>8 A. That actually did the writing?</p> <p>9 No. They would have been</p> <p>10 professional communicators.</p> <p>11 Q. This was reviewed and approved by</p> <p>12 the HR department before it was issued?</p> <p>13 A. That is correct.</p> <p>14 Q. Who was responsible at that time for</p> <p>15 reviewing employee communications with respect to</p> <p>16 the Total Rewards program?</p> <p>17 A. At that time, sir, there would have</p> <p>18 been multiple individuals who would have reviewed</p> <p>19 it. I don't recall exactly when I became manager</p> <p>20 of benefits specifically, but I would have reviewed</p> <p>21 it, the manager of compensation and benefits would</p> <p>22 have reviewed it, and the vice-president of human</p> <p>23 resources for the company would have reviewed it at</p> <p>24 this point.</p>	<p style="text-align: right;">Page 45</p> <p>1 Q. How do you know that?</p> <p>2 A. On, again, the last page of the</p> <p>3 document, PH -- the document -- it reads to me, PHI</p> <p>4 0033, it's franked with -- for U.S. postage and has</p> <p>5 an address on it.</p> <p>6 Q. In or about April of 1998, did the</p> <p>7 company keep records when it made mailings of</p> <p>8 benefits information to employees?</p> <p>9 A. The company kept a copy of what was</p> <p>10 mailed.</p> <p>11 Q. Did it keep a log that would tell</p> <p>12 you the date that it was mailed?</p> <p>13 A. Not to the best of my recollection,</p> <p>14 no.</p> <p>15 Q. Okay.</p> <p>16 Mr. Kremmel, I've handed you what's</p> <p>17 previously been marked as D-6 for identification</p> <p>18 purposes. It's a multipage document that bears the</p> <p>19 date of December 21, 1998, and is headed, "Dear</p> <p>20 Conectiv Management Employee."</p> <p>21 Why don't you take a moment to</p> <p>22 review it and then I'll ask you a few questions</p> <p>23 about it.</p> <p>24 A. Okay.</p>

12 (Pages 42 to 45)

JAMES R. KREMMELE

<p style="text-align: right;">Page 46</p> <p>1 Okay, sir.</p> <p>2 Q. Have you seen this before?</p> <p>3 A. Yes, I have.</p> <p>4 Q. When did you first see it?</p> <p>5 A. To the best of my recollection, I</p> <p>6 saw it in the fall of 1998.</p> <p>7 Q. And what was the context in which</p> <p>8 you first saw it in the fall of 1998?</p> <p>9 A. I would have had part of -- I would</p> <p>10 have had input into the preparation of the document</p> <p>11 at that time, sir.</p> <p>12 Q. Do you know who was the principal</p> <p>13 author of Defendants-6?</p> <p>14 A. I do not know specifically who the</p> <p>15 author was, no.</p> <p>16 Q. Are you able to identify some or all</p> <p>17 of the people who, in the fall of 1998, were</p> <p>18 working to create the document which became</p> <p>19 Defendants-6?</p> <p>20 A. Other than myself, no, not at this</p> <p>21 point. I don't recall.</p> <p>22 Q. Who was the manager of compensation</p> <p>23 and benefits as of December, 1998?</p> <p>24 A. December of '98. To the best of my</p>	<p style="text-align: right;">Page 48</p> <p>1 this -- Number 1, I don't believe this is a full</p> <p>2 document, sir.</p> <p>3 Q. Okay.</p> <p>4 A. I believe this was part of -- part</p> <p>5 of the company's ongoing communications of the</p> <p>6 Total Rewards program, and as -- as part of which</p> <p>7 the company put together a series of questions and</p> <p>8 answers to help employees understand different</p> <p>9 concepts, and this was, I believe, a part of those</p> <p>10 questions and answers that were part of the overall</p> <p>11 communications effort of the Total Rewards program.</p> <p>12 Q. When you say that D-6 is not a</p> <p>13 complete document, do you mean that there are</p> <p>14 attachments that should be included with D-6?</p> <p>15 A. No. I -- no, I don't know whether</p> <p>16 or not there was additional document -- or</p> <p>17 attachments or not. It just -- it seems unusual to</p> <p>18 me that there is no -- at least on the first page</p> <p>19 there is no --</p> <p>20 Q. Logo?</p> <p>21 A. -- logo on it, which leads me to</p> <p>22 believe that this might have been a component of an</p> <p>23 E-Mail communication or another -- part of another</p> <p>24 communications package that we would have put</p>
<p style="text-align: right;">Page 47</p> <p>1 recollection -- I'll restate it. I don't know -- I</p> <p>2 do not know specifically at this point who was</p> <p>3 manager of compensation and benefits in the fall of</p> <p>4 1998, sir.</p> <p>5 Q. Who was the vice-president human</p> <p>6 resources in or about the fall of 1998?</p> <p>7 A. Don Cain.</p> <p>8 Q. When did Mr. Cain leave the company?</p> <p>9 A. To the best of my recollection, Mr.</p> <p>10 Cain left the company in 2002.</p> <p>11 Q. How about Mr. Wilkinson?</p> <p>12 A. I do not recall when Mr. Wilkinson</p> <p>13 left the company, sir.</p> <p>14 Q. Could you describe for me what input</p> <p>15 you had into the creation of Defendants-6.</p> <p>16 A. I don't recall exactly what specific</p> <p>17 input I had. I do recall the document and -- at</p> <p>18 the time, but I don't recall specifically which of</p> <p>19 these I might have written or what I -- input I</p> <p>20 had.</p> <p>21 Q. Did you come to have some</p> <p>22 understanding as to why Defendants-6 was being</p> <p>23 issued?</p> <p>24 A. To the best of my recollection,</p>	<p style="text-align: right;">Page 49</p> <p>1 together at the time.</p> <p>2 Q. Do you know how Defendants-6 was</p> <p>3 issued?</p> <p>4 A. Specifically how it was distributed?</p> <p>5 No, I do not.</p> <p>6 Q. Do you recall receiving a copy of</p> <p>7 Defendants-6?</p> <p>8 A. Specifically, I don't recall, no.</p> <p>9 Q. As of December, 1998, did the</p> <p>10 company keep records of the communications that it</p> <p>11 disseminated to employees with respect to its</p> <p>12 benefit plans?</p> <p>13 A. The company kept copies of the</p> <p>14 materials, to the best of my recollection, but not</p> <p>15 a listing of who was or wasn't distributed any of</p> <p>16 the communications, sir.</p> <p>17 Q. Do you know whether those records</p> <p>18 still exist with respect to Defendants-6?</p> <p>19 A. We are looking at a copy of it.</p> <p>20 Q. I understand. This was produced by</p> <p>21 the Plaintiffs.</p> <p>22 A. Okay.</p> <p>23 Q. Do you know whether the company has</p> <p>24 its records of communications it had with its</p>

13 (Pages 46 to 49)

JAMES R. KREMME

<p style="text-align: right;">Page 50</p> <p>1 employees on the subject of benefits in the period 2 of late 1998 and early 1999? 3 A. I don't know for a fact, sir, no. 4 Q. If you wanted to find that out, who 5 would you ask? 6 A. I would probably -- I would go to 7 the current manager of compensation and benefits 8 for the company. 9 Q. And who is that? 10 A. Mike -- Michael Sullivan. 11 Q. And where does he work? 12 A. Mr. Sullivan works in Washington, 13 D.C. 14 Q. Let me direct your attention to the 15 third paragraph appearing on the first page of D-6 16 for the moment. 17 A. Okay. 18 Q. There are some names listed there 19 and there is a phrase that's used. Do you see the 20 phrase, "Human resources strategic business 21 partner"? 22 A. Yes. 23 Q. Do you know what that means? 24 A. Yes.</p>	<p style="text-align: right;">Page 52</p> <p>1 A. I do not know his specific title, 2 sir. 3 Q. Is he still in human resources? 4 A. No, he's not, to the best of my 5 knowledge. To my knowledge, he's not. 6 Q. How about Harold DeJarnette? What 7 were his duties in or about December of 1998? 8 A. Again, human resources strategic 9 business partner for the company. 10 Q. And he's referenced in the context 11 of supply. What does that mean? 12 A. Would have been energy -- energy 13 supply. 14 Q. Power generation? 15 A. Our energy business, the power 16 generation business, yes, sir. 17 Q. And Mr. Duffy was listed under 18 energy delivery and services. What areas of the 19 company did that embrace? 20 A. The regulated utility business. 21 Q. Then we come to Mr. Wilkinson. Had 22 his duties changed in any way by December, 1998, 23 from what we previously discussed? 24 A. Apparently.</p>
<p style="text-align: right;">Page 51</p> <p>1 Q. Can you explain your understanding 2 of the term. 3 A. Human -- at the time, the human 4 resources strategic business partners were human 5 resource professionals that were in the area -- in 6 the different areas of the business and had 7 responsibility and accountability for day-to-day HR 8 matters within the different individual lines of 9 business. 10 Q. Was this by location or by business 11 function? 12 A. Primarily by business function, sir. 13 Q. Who is Pat Duffy? 14 A. Pat Duffy was a human resources 15 professional for the company. 16 Q. Where was she based in or about 17 December of 1998? 18 A. He was based in Wilmington, 19 Delaware. 20 Q. Sorry. That's one of those 21 ambiguous names. 22 Is Mr. Duffy still with the company? 23 A. He is. 24 Q. What's his position now?</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. Okay. 2 A. Yes. 3 Q. Is his shift to become a human 4 resources strategic business partner, is that a 5 promotion or is that a lateral move? 6 A. At the time, to the best of my 7 recollection, that's a lateral move, sir. 8 Q. And he's listed in the shared 9 services context. Do you understand what that 10 means? 11 A. Yes, I do. 12 Q. And what's your understanding of 13 shared services? 14 A. Shared services were strategic type 15 services that supported the overall business 16 enterprise: Human resources, accounting, finance, 17 information technology. Those and others. Those 18 types of services. 19 Q. I may have skipped something with 20 Mr. DeJarnette. Is he still with the company? 21 A. Mr. DeJarnette is still with the 22 company, yes, sir. 23 Q. And what does he do? 24 A. Mr. DeJarnette is vice-president of</p>

14 (Pages 50 to 53)

JAMES R. KREMMELE

<p style="text-align: right;">Page 54</p> <p>1 human resources for Conectiv Energy Services.  2 Q. And what is the relationship of  3 Conectiv Energy Services to Pepco Holdings, as you  4 understand it?  5 A. To the best of my understanding,  6 Conectiv Energy Services is a wholly-owned  7 subsidiary of Pepco Holdings.  8 Q. Does it have a particular business  9 function?  10 A. Yes, it does.  11 Q. And what's your understanding of its  12 business function?  13 A. Primarily associated in the energy  14 supply business and nonregulated trading  15 businesses -- energy trading businesses.  16 Q. Energy supply would embrace power  17 generation?  18 A. Or procurement, yes, sir.  19 Q. Then we have Dave Motil? I may be  20 butchering his name. M-o-t-i-l.  21 A. Yes, sir.  22 Q. What was Mr. Motil's job function in  23 or about December, 1998?  24 A. I believe Mr. Motil was also an HR</p>	<p style="text-align: right;">Page 56</p> <p>1 Do you see that, sir?  2 A. Yes, I do.  3 Q. The first question is, "What is a  4 cash balance plan?" Do you see that?  5 "Cash balance pension plan," excuse  6 me.  7 A. I do.  8 Q. Let me direct your attention to the  9 first sentence of the answer. It says, "Each year  10 the company credits your individual pension account  11 with a cash contribution equal to a percentage of  12 your total pay, including overtime and bonus."  13 Do you see that, sir?  14 A. Yes, I do.  15 Q. As you understand the cash balance  16 plan that was implemented at Conectiv, effective as  17 of January 1, 1999, does each employee have a  18 hypothetical account?  19 A. I believe they do, yes.  20 Q. And that account receives credits  21 annually, is that correct?  22 A. That's correct.  23 Q. And the credits come in three  24 different forms, correct?</p>
<p style="text-align: right;">Page 55</p> <p>1 strategic business partner at the time.  2 Q. Is that a full-time job?  3 A. Yes, it is.  4 Q. And for what line of business of the  5 company was he responsible?  6 A. To the best of my recollection, Mr.  7 Motil was a strategic partner for the company's  8 nonregulated businesses, to the best of my  9 recollection.  10 Q. Can you give me a little thumbnail  11 sketch of what falls under the nonregulated  12 businesses heading?  13 A. Companies that we're not required --  14 or that we do not derive rates that are approved  15 through the Public Service Commission in any of the  16 states that we operate.  17 Q. Can you give me an example? Even a  18 hypothetical is --  19 A. At the time -- at the time an  20 example might have been some HVAC businesses --  21 business lines that the company had acquired. And  22 that's contemporary to 1998.  23 Q. Now, D-6 moves on with a series of  24 questions and answers.</p>	<p style="text-align: right;">Page 57</p> <p>1 Rather than testing your memory, one  2 of the forms of credit that is applied to the  3 employees' account is a PET credit, is that  4 correct?  5 A. That's correct.  6 Q. And that's calculated as a  7 percentage of their annual compensation, is that  8 correct?  9 A. It's calculated as a percentage of  10 their pensionable -- what's considered pensionable  11 earnings, yes.  12 Q. Another category of credit that is  13 applied to the account is reflective of interest,  14 is that correct?  15 A. That's correct.  16 Q. And that's calculated on the basis  17 of the 30-year Treasury for October of the prior  18 year, is that correct?  19 A. To the best of my recollection,  20 that's correct, yes, sir.  21 Q. And then there are also provisions  22 for what are called transition credits, is that  23 correct?  24 A. That is correct, yes, sir.</p>

15 (Pages 54 to 57)



JAMES R. KREMMELE

<p style="text-align: right;">Page 58</p> <p>1 Q. And transition credits are also 2 applied to pensionable compensation, is that 3 correct? 4 A. That's correct. 5 Q. Going back, then, to what I was 6 focused on in D-6, which is the first sentence of 7 the first answer to the first question, the phrase 8 "Cash contribution" is used. 9 Is it your understanding that these 10 credits that are made to the employee's account on 11 an annual basis are cash? 12 A. Yes. 13 Q. Let me direct your attention to the 14 second page of D-6, JMC 00002. The upper half of 15 the page will give you two tables and then there is 16 a series of questions and answers below that. 17 If I could focus your attention on 18 the second of the three questions and answers, 19 which is headed, "In general, what are the 20 differences in the two plans." 21 A. Okay. 22 Q. What I'd like you to do is just 23 review the answer to that question and then tell me 24 whether, to the best of your knowledge, that's a</p>	<p style="text-align: right;">Page 60</p> <p>1 MS. YU: Objection to the form. 2 THE WITNESS: I'm sorry? 3 BY MR. MALONE: 4 Q. She objected to the form of my 5 question. She didn't like my question. She wants 6 me to give you a better one. 7 To the best of your knowledge, sir, 8 was D-6 intended to fulfill the company's 9 obligation to notify employees of the terms and 10 conditions of the new plan? 11 MS. YU: Objection. 12 BY MR. MALONE: 13 Q. You can answer. She's making her 14 record. 15 A. No, not to the best of my 16 recollection. 17 MR. MALONE: Now might be a good 18 time for a break. Is that okay? 19 MS. YU: Um-hum. 20 (Discussion is held off the record.) 21 (Recess called at 11:35 a.m.) 22 (Resumed at 11:53 a.m.) 23 BY MR. MALONE: 24 Q. We had a break in the proceedings.</p>
<p style="text-align: right;">Page 59</p> <p>1 reasonably accurate summary of the differences 2 between the two plans? 3 A. Okay, sir. 4 Q. To the best of your knowledge, is 5 the description of the differences between the 6 Atlantic Energy plan and the Delmarva plan 7 accurate, as it appears in the second question and 8 answer on the second page of D-6? 9 A. To the best of my knowledge, it is 10 correct, yes. 11 Q. Did you come to form an 12 understanding that the company had a legal 13 obligation to provide some notification to its 14 employees about its adoption of the cash balance 15 plan? 16 A. Yes. 17 Q. And what did you understand the 18 nature of that obligation to be? 19 A. To the best of my recollection, 20 prior to the implementation of a new plan, there 21 was a requirement to disclose the terms and 22 conditions of the plan. 23 Q. And was D-6 intended to fulfill that 24 function?</p>	<p style="text-align: right;">Page 61</p> <p>1 Is there anything that you need to correct in your 2 prior testimony? 3 A. I don't believe so, no. 4 Q. Okay. 5 I'm handing you what we have 6 previously marked as Defendants-7 for 7 identification purposes. It's a multi-page 8 document that has, on the first page, "Your 9 Conectiv Total Rewards" and the Conectiv logo. 10 Why don't you take a moment to look 11 at that and then I'll ask you a few questions about 12 it. 13 A. I'm ready. 14 Q. Have you seen it before? 15 A. Yes, I have. 16 Q. Do you know approximately when you 17 first saw it? 18 A. It would have been in May or June of 19 1998. 20 Q. The document, itself, is undated, 21 correct? 22 A. That's not correct. 23 Q. Is there a date located on it? 24 A. On the cover of it it identifies it</p>

16 (Pages 58 to 61)



JAMES R. KREMMELE

<p style="text-align: right;">Page 62</p> <p>1 as the Conectiv 1998-'99.</p> <p>2 Q. But it doesn't tell you a specific</p> <p>3 date when it was issued, does it?</p> <p>4 A. I do not see it.</p> <p>5 MS. YU: Can we clarify on the</p> <p>6 record, also, that D-7, after the first page and on</p> <p>7 the contents, is really Pages 24 through 28 of a</p> <p>8 document? It looks like it's an excerpt.</p> <p>9 MR. MALONE: I can tell you that</p> <p>10 this is how we produced it to you, which is how we</p> <p>11 had it, and this is what was marked at, I think,</p> <p>12 Mr. Charles' deposition.</p> <p>13 MS. YU: But it --</p> <p>14 MR. MALONE: Whether it's part of a</p> <p>15 bigger document, I don't know. I can look at the</p> <p>16 table of contents, and that certainly seems like a</p> <p>17 rational inference to draw.</p> <p>18 I'm sure Mr. Kremmel could probably</p> <p>19 enlighten us about that, if --</p> <p>20 MS. YU: I just wanted to clarify</p> <p>21 that as you are asking the questions.</p> <p>22 MR. MALONE: Sure.</p> <p>23 BY MR. MALONE:</p> <p>24 Q. At least the part of the document</p>	<p style="text-align: right;">Page 64</p> <p>1 that are available, vision care options that are</p> <p>2 available, life insurance options that are</p> <p>3 available, health care and dependent care</p> <p>4 reimbursement accounts.</p> <p>5 Those were the components that were</p> <p>6 involved, to the best of my recollection.</p> <p>7 Q. Taking a look at D-7, particularly</p> <p>8 at the third physical page, which is headed "New</p> <p>9 Cash Balance Plan," that has a Number 24 in the</p> <p>10 lower left-hand corner.</p> <p>11 A. I see that, yes.</p> <p>12 Q. To your knowledge, is D-7 an excerpt</p> <p>13 from or appear to be an excerpt from a larger</p> <p>14 document?</p> <p>15 A. It appears to be, yes, sir.</p> <p>16 Q. Did you have a role in preparing the</p> <p>17 larger document of which D-7 forms a part?</p> <p>18 A. To the best of my recollection, yes,</p> <p>19 I did.</p> <p>20 Q. And would you describe your role, to</p> <p>21 the best of your recollection, please.</p> <p>22 A. As part of the review of the</p> <p>23 materials that were included in the document and</p> <p>24 prior to its distribution.</p>
<p style="text-align: right;">Page 63</p> <p>1 that you have as D-7 does not appear to have a</p> <p>2 specific date on it that would tell us when it was</p> <p>3 issued.</p> <p>4 A. That's how it appears to me, yes.</p> <p>5 Q. You were able to place this as being</p> <p>6 something that was issued in or about May or June</p> <p>7 of 1998.</p> <p>8 How did you do that?</p> <p>9 A. I recall that this document was part</p> <p>10 of an open enrollment kit that the company utilized</p> <p>11 during that time period for employees to enroll in</p> <p>12 flex benefits.</p> <p>13 Q. Let's unpack that a little bit.</p> <p>14 Open enrollment kit, did that relate</p> <p>15 to health benefits?</p> <p>16 A. Health benefits was a component of</p> <p>17 it, yes, sir.</p> <p>18 Q. What other elements were involved?</p> <p>19 A. Well, I'm referring -- I refer to</p> <p>20 JMC 00191, which was the table of contents for this</p> <p>21 document.</p> <p>22 Q. Right.</p> <p>23 A. Covered medical options that were</p> <p>24 available, prescription benefits, dental options</p>	<p style="text-align: right;">Page 65</p> <p>1 Q. Who else was responsible for</p> <p>2 preparation of the larger document of which D-7</p> <p>3 forms a part?</p> <p>4 A. I don't recall specifically who</p> <p>5 might have been part of that preparation, other</p> <p>6 than myself.</p> <p>7 Q. What was your position at the</p> <p>8 company in or about May or June of 1998? Still</p> <p>9 senior benefits consultant?</p> <p>10 A. I believe at the time I was, sir,</p> <p>11 yes.</p> <p>12 Q. Was Mr. Wilkinson still the manager</p> <p>13 of compensation and benefits?</p> <p>14 A. To the best of my recollection, yes,</p> <p>15 sir.</p> <p>16 Q. Do you know when he left the</p> <p>17 company?</p> <p>18 A. I do not know when Mr. Wilkinson</p> <p>19 left the company, sir.</p> <p>20 Q. Mr. Cain was still vice-president of</p> <p>21 human resources at this time?</p> <p>22 A. He was.</p> <p>23 Q. Do you know how this document was</p> <p>24 issued?</p>

17 (Pages 62 to 65)

JAMES R. KREMME

<p style="text-align: right;">Page 66</p> <p>1 A. To the best of my recollection, this 2 document was mailed to the homes of each of the 3 individuals that it was targeted to. 4 Q. And did you receive one? 5 A. I would have at the time, yes, sir. 6 Q. Do you have a recollection that you 7 did? 8 A. Yes, sir, I do. 9 Q. Now, we had talked a little earlier 10 in your testimony about the company's obligation to 11 notify employees of the terms and conditions of the 12 new cash balance plan. 13 Did the document of which D-7 forms 14 a part serve to fulfill that function? 15 MS. YU: Objection. 16 THE WITNESS: To the best of my 17 recollection, it did, yes, sir. 18 BY MR. MALONE: 19 Q. Do you have an understanding that 20 employees have the right to request access to the 21 plan documents that an employer maintains for their 22 welfare and pension benefit plan? 23 MS. YU: I'm sorry. Could you read 24 that back?</p>	<p style="text-align: right;">Page 68</p> <p>1 can go ahead and answer it. 2 A. I really don't. Could you please 3 rephrase? 4 Q. Sure. 5 If a participant wrote in and said, 6 "Dear Conectiv, I'd like to see the plan document 7 for the 401(k) plan," were there people that were 8 responsible for addressing that in the period late 9 1998 through the close of 1999? 10 A. There is a department that was 11 responsible for that. 12 Q. Who was the head of that department 13 in that time frame? 14 A. The head of the department would 15 have been the manager of compensation and benefits. 16 I don't recall who was the manager of compensation 17 and benefits in late 1999. 18 Q. And were there other people in that 19 department working with him on dealing with 20 requests for plan documents? 21 A. There would have been, yes, sir. 22 Q. How many people staffed the 23 department, to the best of your recollection? 24 A. I don't recall the exact number,</p>
<p style="text-align: right;">Page 67</p> <p>1 (Pertinent portion of the record is 2 read.) 3 THE WITNESS: Yes, that is my 4 understanding. 5 BY MR. MALONE: 6 Q. In the period from 1998 -- late 1998 7 to the end of 1999, was there a particular person 8 at Conectiv that was responsible for receiving and 9 handling requests for plan documents? 10 A. To the best of my recollection, I 11 don't recall that there is -- was one specific 12 person, no, sir. 13 Q. Were there any particular people who 14 were responsible for that function? 15 A. Again, not particular people that 16 I'm aware of, individuals that I'm aware of. 17 Q. Are there individuals that you know 18 of that were responsible, in the period of late 19 1998 through the close of 1999, for responding to 20 inquiries from participants seeking access to plan 21 documents? 22 MS. YU: Objection as the form. 23 BY MR. MALONE: 24 Q. If you understand the question, you</p>	<p style="text-align: right;">Page 69</p> <p>1 sir. 2 Q. Okay. 3 Did the department have a name? 4 A. Yes. 5 Q. What was the name? 6 A. Compensation and benefits. 7 Q. Was there a log maintained when 8 participants wrote to request documents, to your 9 knowledge? 10 A. Not to my knowledge, sir, no. 11 Q. Does the company maintain records of 12 those requests? 13 A. Could you repeat the question for 14 me, please? 15 (Pertinent portion of the record is 16 read.) 17 THE WITNESS: On a case-by-case 18 basis, they may, but I don't -- again, to repeat my 19 question -- answer to the previous question, I 20 don't believe that there was a log or anything 21 kept, sir. 22 BY MR. MALONE: 23 Q. But they keep a file copy? 24 A. I'm not -- I don't know whether or</p>

18 (Pages 66 to 69)

JAMES R. KREMMELE

<p style="text-align: right;">Page 70</p> <p>1 not there is a copy kept in each circumstance, sir.  2 No, I don't -- I don't know that answer.  3 Q. Okay. That's all I have for you on  4 D-7.  5 Mr. Kremmel, I've handed you what  6 was previously marked as D-8, a multiple-page  7 document that's headed, "Conectiv Total Rewards,  8 The Tangible and Hidden Paychecks."  9 Why don't you take a moment to  10 review it and then I'll ask you a few questions  11 about it.  12 A. Okay, sir.  13 Q. Have you seen D-8 before?  14 A. I have seen it before.  15 Q. When was the first time you saw D-8?  16 A. To best of my recollection, it was  17 sometime after the first of the year 2007. This  18 year.  19 Q. Can you tell me what D-8 is?  20 A. To the best of my knowledge, D-8 is  21 a presentation of the Total Rewards design that was  22 prepared for the Conectiv leadership team to  23 communicate to the managers and leaders throughout  24 the company of the designs that were going to be</p>	<p style="text-align: right;">Page 72</p> <p>1 A. Based on the flow, the content, and,  2 most importantly, information on the last page, JMC  3 00214.  4 Q. What is it about the last page  5 that's distinctive to you?  6 A. The very last statement on the page.  7 Q. "Expect leaders" --  8 A. The third bullet that says, "Expect  9 leaders to support direction and positively engage  10 employees."  11 Q. Do you know who prepared D-8?  12 A. I do not know specifically who  13 prepared it, no, I do not.  14 Q. Were there any people on the  15 Conectiv Total Rewards team that were primarily  16 focused on the communication strategy to more  17 senior level employees?  18 A. Not to my recollection, no, sir.  19 Q. Have you discussed D-8 with anyone?  20 A. Yes.  21 Q. Who? With whom?  22 A. My attorney.  23 Q. Anyone else?  24 A. Not to my knowledge.</p>
<p style="text-align: right;">Page 71</p> <p>1 implemented for the new company.  2 Q. I think you used the phrase -- not  3 trying to put words in your mouth; just trying to  4 put it in context -- "Conectiv management team or  5 leadership team."  6 Could you define that in some way,  7 so that I might be able to identify the type or  8 level of employee?  9 A. Sure.  10 Again, to the best of my  11 recollection, it would be for department managers,  12 general managers, senior leaders and executives in  13 the company.  14 Q. So D-8 was not something that was  15 designed as a mass communication for all employees?  16 A. No.  17 This was, again, part of our -- the  18 overall communication strategy. This was a  19 document that, to the best of my knowledge, was  20 prepared to communicate to the leadership team so  21 that they'd be best positioned to answer, you know,  22 questions and understand the business context of  23 the changes.  24 Q. What's your knowledge based on?</p>	<p style="text-align: right;">Page 73</p> <p>1 Q. Let me direct your attention, if I  2 might, to Page 201. That is JMC 00201. You should  3 have a graph there -- a bar graph of regional  4 comparisons.  5 Do you see that, sir?  6 A. I do see it.  7 Q. What do you understand the graph on  8 page JMC 00201 of D-8 to convey?  9 MS. YU: Are you asking about a  10 specific graph or both?  11 MR. MALONE: Both of them.  12 THE WITNESS: Let me respond with  13 half the graph first and respond to the graph  14 that's titled "Retirement."  15 BY MR. MALONE:  16 Q. Let the record reflect that the  17 witness has placed his hands on either side of the  18 bar graph that's the left-hand side of the  19 indicated page in the record.  20 A. To the best of my knowledge, what  21 this graph is intended to show is a relative  22 comparison of -- of expenditures by the company  23 relative to other regional companies.  24 Q. The first bar on the left-hand side</p>

19 (Pages 70 to 73)

JAMES R. KREMMELE

<p style="text-align: right;">Page 74</p> <p>1 of the left-hand graph has a figure there for  2 Atlantic.  3 Do you see that, sir?  4 A. I do.  5 Q. And, to your knowledge, is that  6 figure that's reflected in that bar graph accurate?  7 A. I don't have any direct knowledge of  8 whether it is or not accurate.  9 Q. Do you have any reason, as you sit  10 here today, sir, to believe that any of the figures  11 appearing in the left-hand bar graph are  12 inaccurate?  13 A. No. No, I don't.  14 Q. Let me take you over to the  15 right-hand bar graph for a second.  16 What do you understand this to  17 convey?  18 A. That would be the bar graph on the  19 right side of the page --  20 Q. Right side of the page.  21 A. -- with the title of "Health" --  22 Q. That's correct.  23 A. -- and a "2" on it?  24 Again, it is the relative comparison</p>	<p style="text-align: right;">Page 76</p> <p>1 that they are inaccurate?  2 A. I believe -- no reason to believe  3 they are not accurate, yes.  4 Q. Let me take you, if I might, to JMC  5 00203 of Defendants-8. You should be at a page  6 headed "Overview: Cash Balance Pensions."  7 Do you have that, sir?  8 A. Yes, I do.  9 Q. And, in the right-hand segment of  10 the page there is a graph there.  11 Do you see it?  12 A. Not on the right-hand side.  13 Q. Strike that.  14 The left-hand side of the page there  15 is a line graph, is that correct?  16 A. There is a graph, yes.  17 Q. What do you understand this graph to  18 convey?  19 A. My understanding -- or, when I look  20 at this graph, it appears to be a conceptual  21 drawing of a comparison between a cash balance  22 plan -- or it says "New cash balance" plan and  23 current plan.  24 Q. Do you know who prepared that graph?</p>
<p style="text-align: right;">Page 75</p> <p>1 of dollars spent of Conectiv versus other -- other  2 companies in the region.  3 Q. Now, these bars have two shadings to  4 them, don't they?  5 A. They appear to, yes.  6 Q. Do you understand what the different  7 shadings mean, in context?  8 A. I do.  9 Q. Could you explain it?  10 A. To my -- the best of my knowledge,  11 it is showing not only the overall comparison of --  12 of -- of expenditures by Conectiv versus the  13 regional companies, but also the proportion of  14 that -- those expenditures that are incurred by the  15 employer and also the employee.  16 Q. Okay.  17 As you look at the right-hand bar  18 graph of Page JMC 00201 of Defendants-8, do you see  19 any figures there that appear to be incorrect to  20 you?  21 A. Again, I don't have any direct  22 knowledge of whether they are or are not correct,  23 sir.  24 Q. So you have no reason to believe</p>	<p style="text-align: right;">Page 77</p> <p>1 A. No, I don't know individual -- or  2 specifically who prepared it.  3 Q. Do you know any of the data or  4 assumptions that went into that graph?  5 A. No, I do not. Again, it appears to  6 me to be a conceptual drawing.  7 Q. Let me take to you the next page, if  8 I might, which is JMC 00204 of D-8.  9 A. Okay.  10 Q. Directing your attention to the  11 right half of the page -- and I mean the right half  12 this time -- do you see some handwritten notes at  13 the bottom?  14 A. I do, yes.  15 Q. Do you recognize the handwriting?  16 A. I do not, no.  17 Q. It's not yours?  18 A. No, not to the best of my  19 recollection.  20 Q. How about the next page, which would  21 be JMC 00205? Do you see, in handwriting, "Salary  22 day before you retire"?  23 A. I do see that.  24 Q. Do you recognize that?</p>

20 (Pages 74 to 77)

JAMES R. KREMMELE

<p style="text-align: right;">Page 78</p> <p>1 A. I do not recognize it.</p> <p>2 Q. Can you tell me, from the context of</p> <p>3 D-8, approximately when it may have been issued?</p> <p>4 A. Can I review the document? Just</p> <p>5 take a peak for a minute?</p> <p>6 Q. Sure, absolutely.</p> <p>7 A. Sir, I believe the timing of the</p> <p>8 document was April/May of 1998.</p> <p>9 Q. And you base that on? Any</p> <p>10 particular aspects of the document that suggest</p> <p>11 that to you?</p> <p>12 A. A couple things, sir. One, on JMC</p> <p>13 00207, the title of the page is "Overview:</p> <p>14 Conectiv Flex." This was the enrollment -- first</p> <p>15 enrollment period in the new post-merger health and</p> <p>16 welfare benefits in the -- you know, it talks about</p> <p>17 the enrollment period being from May through June</p> <p>18 of 1998.</p> <p>19 Q. And, based on that, you can infer</p> <p>20 that this was issued sometime prior to May 18th, is</p> <p>21 that correct?</p> <p>22 A. That and, based on my -- there is</p> <p>23 also -- well, that's the most direct reference.</p> <p>24 Also, just at the time that timing would fit with</p>	<p style="text-align: right;">Page 80</p> <p>1 A. Okay.</p> <p>2 Q. You've seen this before?</p> <p>3 A. I have.</p> <p>4 Q. What is D-9?</p> <p>5 A. What is D-9?</p> <p>6 Q. Yes.</p> <p>7 A. D-9 was a communication of Conectiv</p> <p>8 to employees.</p> <p>9 Q. Do you know how D-9 was disseminated</p> <p>10 to employees?</p> <p>11 A. To the best of my recollection, D-9</p> <p>12 would have been distributed in a hard copy to</p> <p>13 employees.</p> <p>14 Q. Internally?</p> <p>15 A. I believe this document was</p> <p>16 distributed internally, yes.</p> <p>17 Q. Let me direct your attention to the</p> <p>18 second page of D-9, and the left-hand column.</p> <p>19 Do you see your name?</p> <p>20 A. Yes.</p> <p>21 Q. Did you author what is set forth in</p> <p>22 the left-hand column?</p> <p>23 A. I believe at the time I worked with</p> <p>24 an individual in our corporate communications</p>
<p style="text-align: right;">Page 79</p> <p>1 the strategy of how we would -- how we would roll</p> <p>2 out new plans in the company and communicate new</p> <p>3 plans in the company to the leadership team.</p> <p>4 Q. Were there meetings scheduled, to</p> <p>5 your recollection, in the April/May time frame for</p> <p>6 the leadership team to help them understand what</p> <p>7 the strategy was on rolling out the new plan?</p> <p>8 A. Was the question the date, sir?</p> <p>9 MR. MALONE: Sean, could you read it</p> <p>10 back?</p> <p>11 (Pertinent portion of the record is</p> <p>12 read.)</p> <p>13 THE WITNESS: I don't -- not to my</p> <p>14 recollection.</p> <p>15 BY MR. MALONE:</p> <p>16 Q. You did not attend any such</p> <p>17 meetings?</p> <p>18 A. Not to my recollection.</p> <p>19 Q. Mr. Kremmel, I've handed you a</p> <p>20 document that was previously marked D-9 for</p> <p>21 identification purposes. It's headed, InSight, I-n</p> <p>22 capital S-i-g-h-t, and appears to bear a date of</p> <p>23 March of 1999. You can take a moment to review it</p> <p>24 and then I'll ask you a few questions about it.</p>	<p style="text-align: right;">Page 81</p> <p>1 group, but the contact would have been mine, yes.</p> <p>2 Q. Do you recall who it was you worked</p> <p>3 with?</p> <p>4 A. Not specifically, no, I do not.</p> <p>5 Q. What was your position in or about</p> <p>6 March of 1999?</p> <p>7 A. I believe at this point I was</p> <p>8 manager of benefits for Conectiv.</p> <p>9 Q. So you had replaced Mr. Wilkinson?</p> <p>10 A. No, sir.</p> <p>11 Q. Was Mr. Wilkinson still at the</p> <p>12 company in March of 1999?</p> <p>13 A. I don't know, sir.</p> <p>14 Q. Okay.</p> <p>15 A. I don't recall.</p> <p>16 Q. As of March of 1999, who did you</p> <p>17 report to?</p> <p>18 A. To the best of my recollection, I</p> <p>19 reported to John Zimmerman.</p> <p>20 Q. And Mr. Zimmerman, in turn, reported</p> <p>21 to Don Cain?</p> <p>22 A. Don Cain, yes, sir.</p> <p>23 Q. Let me focus you on the boldface</p> <p>24 type in the left-hand column on the second page of</p>

21 (Pages 78 to 81)



JAMES R. KREMME

<p style="text-align: right;">Page 82</p> <p>1 D-9. I'm going to call that a timeline.  2 Do you think that's a fair  3 characterization?  4 A. Yes.  5 Q. As you sit here today, does the  6 timeline indicated in boldface type in the left  7 column on the second page of D-9 appear reasonably  8 accurate to you?  9 A. I don't have any reason not to  10 believe it's accurate.  11 Q. Okay.  12 A. That I believe, no.  13 Q. Let me direct your attention, if I  14 might, to the paragraph following the third set of  15 boldface type. You'll see there -- boldface says  16 "July/August, Cash Balance Pension Plan Meeting for  17 Employees," and then it references the human  18 resources team.  19 Do you see that, sir?  20 A. Yes, I do.  21 Q. Can you tell me who comprised the  22 human resource team? Who did you mean to embrace  23 when you used that phrase?  24 A. I think, contemporary to this, it</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. I've handed you a document that's  2 been marked D-10 previously. It's two pages long  3 and headed "MidWeek Extra," and bears the date of  4 June 23, 1999.  5 Why don't you take a moment to  6 review it and then I'll ask you a few questions  7 about it.  8 Let's go off the record while he  9 does that.  10 (Discussion is held off the record.)  11 Have you had an opportunity to  12 review D-10?  13 A. Yes, I have, sir.  14 Q. Have you seen it before?  15 A. Yes, I have, sir.  16 Q. When did you first see it?  17 A. Sir, I would have first seen it in  18 June of 1999.  19 Q. Did you write it?  20 A. I do not recall writing the  21 document, no.  22 Q. Do you know who authored it?  23 A. I do not know who the author of it  24 was, no.</p>
<p style="text-align: right;">Page 83</p> <p>1 would have been the individuals in the compensation  2 and benefits group of the company.  3 Q. Would that include the, I think we  4 called it, the human resources strategic business  5 partners?  6 A. No.  7 Q. Were there, in fact, a series of  8 meetings held in or about July or August of 1999  9 to -- for employees to attend to learn about the  10 cash balance plan?  11 A. Yes, there were.  12 Q. And did you participate in those  13 meetings?  14 A. I participated in some of those  15 meetings, yes, sir.  16 Q. Do you recall approximately how  17 many?  18 A. I do not recall, no, sir.  19 Q. Were the meetings recorded in some  20 form?  21 A. The meetings were not videotaped or  22 not audio recorded, no.  23 Q. Were there minutes maintained?  24 A. No, not to my recollection.</p>	<p style="text-align: right;">Page 85</p> <p>1 Q. Who was it sent to? "It" being  2 D-10.  3 A. I don't -- I don't know who,  4 specifically, it was sent to.  5 Q. Can you break it down by role at the  6 company?  7 A. To the best of my recollection, this  8 was sent to all nonrepresented employees in the  9 company. To the best of my recollection.  10 Q. Let me direct your attention to the  11 second paragraph on the first page of D-10 and  12 specifically the second sentence.  13 A. Yes.  14 Q. It says, "As managers, please make  15 sure that everyone who wishes to attend the  16 information session is given the opportunity."  17 Do you see that?  18 A. Um-hum. Yes, sir, I do.  19 Q. The next page has a schedule of  20 meetings. Correct?  21 A. The second page does have a listing  22 of meetings, yes, sir.  23 Q. Now, what employees were offered the  24 opportunity to attend the meetings on the cash</p>

22 (Pages 82 to 85)



JAMES R. KREMME

<p style="text-align: right;">Page 86</p> <p>1 balance plan? Nonrepresented, represented, or 2 both? 3 A. To the best of my recollection, 4 all -- all nonrepresented employees were invited. 5 Again, to the best of my recollection, I don't 6 recall that any represented employees who wished to 7 attend and were not on shift, if they wanted to 8 attend, that they could not attend, but the target 9 of the meetings was for the nonrepresented 10 employees. 11 Q. Because they were the ones who would 12 be affected by the changes? 13 A. That's correct. 14 Q. Now, the last paragraph on the first 15 page says -- starts, "If you or your employees have 16 questions after receiving the opening statements, 17 please hold them until the meetings." 18 Do you see that, sir? 19 A. I do see that. 20 Q. I look at that and I look at the 21 statement earlier, "as managers," and it struck me 22 that this document didn't appear to be intended for 23 all nonrepresented employees. 24 Do you agree or disagree with that?</p>	<p style="text-align: right;">Page 88</p> <p>1 discussing stories in the national media raising 2 concerns about some cash balance plans that, quote, 3 do not offer the same level of financial security 4 or grandfathering provisions as Conectiv's cash 5 balance plan. 6 Do you see that, sir? 7 A. I do see that statement, yes. 8 Q. Was part of the purpose of the 9 meetings that were scheduled for employees to 10 explain to them how Conectiv's cash balance plan 11 was a better plan than some of the others? 12 MS. YU: Objection to form. 13 THE WITNESS: I -- could you repeat 14 the question? I want to make sure I answer it 15 correctly. Or could you please read the question 16 back? 17 (Pertinent portion of the record is 18 read.) 19 THE WITNESS: No. I don't believe 20 the objective of the meeting was to explain to the 21 employees that the Conectiv plan was a better plan 22 than the others. 23 BY MR. MALONE: 24 Q. What was the purpose of the</p>
<p style="text-align: right;">Page 87</p> <p>1 A. Sir, it's my recollection that this 2 communication went to all nonrepresented employees. 3 Q. That's fine. 4 A. I don't recall that it was limited 5 just to managers or supervisors. 6 Q. In the third paragraph appearing on 7 the first page of D-10 there is a statement there 8 that the meetings that are being discussed in D-10 9 will be the best source of information on the plan 10 and employees' opening balances. 11 Do you see that, sir? 12 A. Which paragraph? 13 Q. Third paragraph. 14 A. Okay. Let me read it. 15 Q. First page, first sentence. 16 A. I see it. 17 Q. Do you agree or disagree with that 18 statement? 19 A. Contemporary to the time -- I agree 20 that, yes, the intention of these meetings was to 21 present the plan and answer any and all questions 22 that any participant in the meeting would bring up, 23 to the best of our ability. 24 Q. That paragraph continues by</p>	<p style="text-align: right;">Page 89</p> <p>1 meeting -- meetings? Excuse me. 2 A. The purpose of the meeting was to 3 present information on the plans and answer 4 employees' questions -- any employees' -- questions 5 that they might have about their opening cash 6 balance statement or any other questions that they 7 might have about the implementation of the new 8 plan. 9 Q. Let me direct your attention to the 10 second sentence appearing on the third paragraph of 11 the first page of D-10. It reads, "Recent stories 12 in the national media have raised concerns about 13 some cash balance plans that do not offer the same 14 level of financial security or grandfathering 15 provisions as Conectiv's cash balance plan." 16 Is that an accurate statement? 17 A. I have no reason to believe it's not 18 accurate. 19 Q. You attended some of the employee 20 meetings that were held in or about July of 1999 to 21 explain the plan, did you not? 22 A. Yes, I did. 23 Q. In words or in substance, were 24 employees told that, while there were recent</p>

23 (Pages 86 to 89)

JAMES R. KREMMELE

<p style="text-align: right;">Page 90</p> <p>1 stories in the national media that raised concerns  2 about some cash balance plans, the Conectiv plan  3 offered a greater level of financial security or  4 grandfathering?  5 MS. YU: Object to the form.  6 THE WITNESS: I don't recall exactly  7 what the context was that we presented to  8 employees, although I do recall that there was  9 discussion of the issue as part of the  10 presentation. I don't recall the specific  11 statements that were made or -- or what the  12 presentation was, sir.  13 BY MR. MALONE:  14 Q. Let me take you to the next  15 paragraph. The second sentence indicates that  16 "Vanguard will act as the plan administrator and  17 the Towers Perrin consulting firm will act as the  18 actuary."  19 Do you see that, sir?  20 A. Second sentence in the fourth  21 paragraph -- yes.  22 Q. That's correct.  23 As you recall the employee meetings  24 that you attended in or about July of 1999, were</p>	<p style="text-align: right;">Page 92</p> <p>1 particular meetings?  2 A. There would -- I believe that there  3 was more than one representative of Vanguard at  4 each of the meetings. If that helps.  5 Q. That's much more precise than what I  6 asked you. Thank you.  7 How about Towers Perrin? Was  8 someone from Towers Perrin at every one of these  9 meetings for employees?  10 A. Yes, there was.  11 Q. Was it the same person?  12 A. Again, I don't recall whether or not  13 the same person attended each meeting or not, sir.  14 Q. Do you remember the names of any of  15 the people from Towers Perrin?  16 A. I do not.  17 Q. Do you remember, by title or  18 function, who -- you know, some descriptive feature  19 of the Towers Perrin personnel?  20 A. I don't recall the titles of any of  21 the individuals who attended the meetings.  22 Q. How many meetings did you attend?  23 A. I don't recall the number of  24 meetings that I attended.</p>
<p style="text-align: right;">Page 91</p> <p>1 there representatives of Vanguard in attendance at  2 those meetings?  3 A. There were.  4 Q. Do you recall particular individuals  5 from Vanguard who appeared?  6 A. I do not recall the names of the  7 individuals.  8 Q. By title?  9 A. No, I don't.  10 Q. Do you know whether the same person  11 from Vanguard attended all the meetings?  12 A. I don't recall, no, whether or not  13 the -- whether or not the same individual came to  14 each meeting.  15 As I recall, just to further -- I  16 mean, I believe there was a team from Vanguard that  17 attended, and I don't recall whether the same --  18 all or the same individuals attended each of the  19 meetings.  20 Q. When you say there was a team, does  21 that mean that at a particular meeting there might  22 be more than one representative of Vanguard, or  23 does that mean that there might be more than one  24 representative of Vanguard who were staffing</p>	<p style="text-align: right;">Page 93</p> <p>1 Q. Did you keep notes?  2 A. Not to my recollection, no.  3 Q. Let me ask you to turn to the second  4 page of D-10. The table suggests that a number of  5 meetings were scheduled at a number of locations  6 between July 12th and July 29th.  7 Do you see that?  8 A. Yes, I do.  9 Q. That time frame, is that consistent  10 with your recollection of when the meetings took  11 place?  12 A. Yes, sir, it is.  13 Q. And how would you describe the  14 format of the meeting to someone that had not  15 attended?  16 A. The format of the meeting?  17 Q. Yes.  18 A. It was a -- to my recollection, it  19 was a presentation and question and answer period  20 at each of the presentations, sir.  21 Q. And at each presentation was there  22 someone from human resources to give a  23 presentation?  24 A. There would have been, yes.</p>

24 (Pages 90 to 93)

JAMES R. KREMMELE

<p style="text-align: right;">Page 94</p> <p>1 Q. And was there someone from Vanguard 2 at each?</p> <p>3 A. To the best of my recollection, yes, 4 there was.</p> <p>5 Q. And was there someone from Towers 6 Perrin?</p> <p>7 A. Again, to the best of my 8 recollection, there was.</p> <p>9 Q. Were there any other team members 10 who were part of the presentation team at these 11 employee meetings, other than HR, Vanguard, Towers 12 Perrin?</p> <p>13 A. Team members? I'm not sure what you 14 mean by "team member."</p> <p>15 Q. Let me do it in a little colloquial 16 fashion. The employees walked into a room; there 17 were a bunch of people up on the dais giving a 18 presentation. Somebody from HR, somebody from 19 Vanguard, somebody from Towers Perrin.</p> <p>20 Anybody else?</p> <p>21 A. I don't recall any other specific 22 company representatives that were there, sir.</p> <p>23 Q. Any outside representatives?</p> <p>24 A. I don't specifically recall any</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. Do you know who prepared the 2 PowerPoint presentation?</p> <p>3 A. I do not.</p> <p>4 Q. Did you assist in preparing it?</p> <p>5 A. I recall assisting in it, yes. I 6 don't recall who actually prepared it.</p> <p>7 Q. At any of the meetings that you 8 attended, were you one of the people providing the 9 presentation?</p> <p>10 A. I believe I was, yes.</p> <p>11 Q. Did that happen on more than one 12 occasion?</p> <p>13 A. To the best of my recollection, it 14 did, yes.</p> <p>15 Q. Can you tell me something about 16 locations at which you may have appeared to give a 17 presentation?</p> <p>18 A. I believe the first meeting that's 19 listed on July 12th, I attended that meeting, and I 20 believe -- to the best of my recollection, I also 21 attended the meetings at NDGO and at King Street on 22 July 13th and July 14th.</p> <p>23 Q. Okay.</p> <p>24 A. Those are ones that I -- I</p>
<p style="text-align: right;">Page 95</p> <p>1 outside representatives being at any of the 2 meetings.</p> <p>3 Q. Okay.</p> <p>4 Now, from the chart, it appears that 5 you were having multiple meetings on multiple days 6 at multiple locations to roll out the cash balance 7 plan.</p> <p>8 Is that correct?</p> <p>9 A. That's correct, yes, sir.</p> <p>10 Q. What measures were taken to make 11 sure that the presentation was reasonably 12 consistent from location to location and from time 13 to time?</p> <p>14 A. Again, to the best of my 15 recollection, the same presentation was utilized at 16 each location.</p> <p>17 Q. In what form was that presentation?</p> <p>18 A. It was an overhead PowerPoint 19 presentation that was followed at each of the 20 presentations.</p> <p>21 Q. And were notes provided to the 22 speakers to assist them with the PowerPoint 23 presentation?</p> <p>24 A. Not to my recollection sir, no.</p>	<p style="text-align: right;">Page 97</p> <p>1 believe -- I believe -- my recollection is I 2 attended all three of those.</p> <p>3 I don't recall which of the others 4 that I attended. Although there were others, I 5 just don't recall which ones I would have attended, 6 sir.</p> <p>7 Q. What does NDGO mean?</p> <p>8 A. That's an acronym for Northern 9 Division, General Offices. It's in Newark, 10 Delaware.</p> <p>11 Q. Is that where you are now?</p> <p>12 A. That's where my office is, yes.</p> <p>13 Q. Did they take attendance at the 14 meetings?</p> <p>15 A. Not to my recollection.</p> <p>16 Q. Were the meetings mandatory?</p> <p>17 A. No. The employees -- it was not a 18 mandatory condition of employment that they attend.</p> <p>19 Q. Do you have any ability to estimate 20 what percentage of employees attended?</p> <p>21 A. Only my gut recollection at the 22 time. It's my -- it would be subjective, not 23 objective.</p> <p>24 Q. I'll take subjective.</p>

25 (Pages 94 to 97)

JAMES R. KREMME

<p style="text-align: right;">Page 98</p> <p>1 A. If they were available, they were  2 there, and we made it very -- we tried very hard at  3 the time, as we did, typically, in the company with  4 any types of new programs, to do multiple times,  5 multiple shifts, because some of the engineers and  6 supervisors at the power plants would have been on  7 shift.  8 We tried to make sure that -- with  9 this type of a roll-out, we tried to make sure that  10 you had the ability for employees to be available  11 for one or more of the meetings. And they weren't  12 precluded from coming -- only going to one, if they  13 had other questions.  14 Q. How were the questions handled?  15 A. Right at the end of the presentation  16 there was a question and answer period.  17 Q. Were suggested answers to  18 anticipated questions prepared in advance of the  19 meetings?  20 A. Not to my recollection, no, sir.  21 Q. So that, depending upon the  22 particular meeting that an employee attended, the  23 same question might be answered slightly  24 differently, from one meeting to the next?</p>	<p style="text-align: right;">Page 100</p> <p>1 give the best and most concise answer to the  2 question.  3 Q. Now, in the actual presentation  4 part, did Vanguard representatives speak?  5 A. To the best of my recollection, they  6 did, yes.  7 Q. And what topics did they generally  8 cover?  9 A. Again, to the best of my  10 recollection, it was their role as recordkeeper and  11 administrator of the plan, and that was a new role  12 for them. It was one of the first opportunities to  13 have them in front of the employees.  14 Q. Did representatives of Towers Perrin  15 speak as part of the presentation at these  16 meetings?  17 A. They did, to the best of my  18 recollection.  19 Q. To the best of your recollection,  20 what topics did they cover?  21 A. Topics concerning the calculation  22 of -- the calculation of the initial cash balances,  23 and also the plan design type questions.  24 Q. And what topics did the human</p>
<p style="text-align: right;">Page 99</p> <p>1 A. Slightly differently?  2 Possibly.  3 Q. Who was responsible for answering  4 the questions? Was it a human resources person or  5 was it allocated among human resources, Vanguard  6 and Towers Perrin?  7 A. My recollection of the time is that  8 it was a team question and answers, and, by "team,"  9 I mean it would have been the -- a combination of  10 all of the above, the company representatives,  11 Vanguard and Towers Perrin, depending on the  12 question and the context of the question.  13 If it had something to do with what  14 number would I call if I have a question for  15 Vanguard, the Vanguard representative would  16 respond. If it was a technical question around how  17 my starting cash balance was estimated, it might  18 have been Towers who would respond. If it was a  19 general question of, you know, business or  20 whatever, the company representative might respond.  21 It would really depend on what the  22 question was, but that's my recollection of how the  23 questions were answered. We would look to the  24 individual on the team who was in the position to</p>	<p style="text-align: right;">Page 101</p> <p>1 resources people generally cover?  2 A. Overview questions -- well, act as  3 the facilitator of the meeting, do introductions,  4 and then more of some kind of -- more background  5 information on the plan.  6 Q. If I can focus you back on the  7 second page of D-10 for a second. The table has,  8 in the far right-hand column, a series of on-site  9 contacts.  10 Do you see that?  11 A. I do.  12 Q. The first one is Marie Falkowski.  13 Do you know what her position was in  14 or about July of 1999?  15 A. To the best of my recollection, she  16 was the building attendant at the conference  17 center -- the Conectiv conference center.  18 Q. So, if I look at this table -- or  19 this column, these are not people that are in the  20 human resources department, are they?  21 A. No, sir.  22 Q. Is there something you need to  23 correct?  24 A. I believe one of the individuals</p>

26 (Pages 98 to 101)

JAMES R. KREMME

<p style="text-align: right;">Page 102</p> <p>1 might have been in the human resources department 2 at the time. 3 Q. Who would that be? 4 A. I believe Kelley McMillan might -- 5 might have been in human resources at the time, 6 sir. 7 Q. And she's listed for the July 14th 8 King Street meeting? 9 A. July 14th, yes, and that -- and, 10 again, the rest of these individuals were 11 secretaries or building attendants at these 12 locations. But I believe Kelley McMillan might 13 have been in human resources as an administrative 14 assistant. 15 Q. Was the King Street facility the 16 principal executive offices at that time? 17 A. At that time, yes, sir, it was. 18 Q. Thank you for that clarification. 19 Moving on to D-12. I've handed you 20 a document we've previously marked as D-12 for 21 identification purposes. It's headed "InSight 22 Online." Bears the date, July 9, 1999 in the upper 23 quarter of the first page, but also bears a date of 24 8/9/2006 at the bottom of the page, next to the</p>	<p style="text-align: right;">Page 104</p> <p>1 A. I don't recall, sir. 2 Q. Did the meetings extend into August? 3 A. I don't recall, sir. 4 Q. Do you know who prepared D-12? 5 A. I do not know the specific 6 individual that prepared it, no, I do not. 7 Q. Was there someone at the company, in 8 or about July of 1999, who was responsible for 9 preparing the InSight Online document? 10 A. There was a department who was 11 responsible for it. I don't believe there is -- I 12 don't know if there is any one individual that was 13 responsible for it. 14 Q. And what department was that? 15 A. It would have been the company's 16 communications or corporate communications 17 department. 18 Q. Who was the head of that department 19 in or about July, 1999? 20 A. I do not recall. 21 Q. Do you remember anyone who was the 22 head of that department in the period between, say, 23 1997 and the close of 1999? 24 A. The head of the department?</p>
<p style="text-align: right;">Page 103</p> <p>1 URL. 2 A. Okay. 3 Q. Have you seen this before? 4 A. I have. 5 Q. Can you tell me what this is? 6 A. This was a communication -- employee 7 communication developed by Conectiv. 8 Q. How was this disseminated? 9 A. To the best of my recollection, this 10 was disseminated by E-Mail or on the company 11 Intranet. 12 Q. Do you recall when the company 13 established the Intranet? 14 A. I do not, no. 15 Q. The second to last paragraph on the 16 first page of D-12 indicates that the schedule for 17 the meetings was revised. 18 Do you see that? 19 A. I do. 20 Q. Can you summarize for me in any way 21 what the changes were to the schedule that we 22 previously saw? 23 A. I don't recall, sir. 24 Q. Were more meetings scheduled?</p>	<p style="text-align: right;">Page 105</p> <p>1 I do not recall any heads of the 2 department. Sorry. 3 Q. Can you identify anyone that worked 4 in that department in the period from late 1997 5 through the close of 1999? 6 A. I remember there was a gentleman by 7 the name of Larry Boehm, B-o-e-h-m, who was in the 8 department at the time. I do not believe he was 9 the manager of the department, though, sir. 10 Q. Did you interact with Mr. Boehm in 11 connection with employee communications with 12 respect to the adoption of the cash balance plan? 13 A. I recall working with Larry on 14 different communications. I don't recall if any of 15 them had specifically to do with the adoption of 16 the cash balance plan. 17 Q. Let me rephrase the question and not 18 make it so narrow. 19 We've reviewed this morning, and a 20 little bit this afternoon, various communications 21 that were provided to employees about changes in 22 the overall benefit plans, and we've gone from 23 exhibit to exhibit to exhibit. 24 Did you work with Mr. Boehm on any</p>

27 (Pages 102 to 105)



JAMES R. KREMME

Page 106	Page 108
<p>1 of those, to your recollection?</p> <p>2 A. I believe Mr. Boehm is listed as the</p> <p>3 editor on one of those communications that we've</p> <p>4 reviewed today, yes, sir.</p> <p>5 Q. Anyone else you can recall working</p> <p>6 with in the corporate communications department in</p> <p>7 the period from late 1997 through the close of</p> <p>8 1999?</p> <p>9 A. I don't recall anyone else</p> <p>10 specifically, no. He's the only one.</p> <p>11 MR. MALONE: Why don't we break now.</p> <p>12 (Recess called at 12:56 p.m.)</p> <p>13 (Resumed at 1:59 p.m.)</p> <p>14 BY MR. MALONE:</p> <p>15 Q. We had a break for lunch.</p> <p>16 Anything that you need to correct in</p> <p>17 your prior testimony?</p> <p>18 A. Not at this time.</p> <p>19 Q. We were looking at D-12 before</p> <p>20 lunch. Can you just grab that real quickly.</p> <p>21 A. Got it.</p> <p>22 Q. Okay.</p> <p>23 Do you know, as of 1998 and 1999,</p> <p>24 whether all employees had access to computers at</p>	<p>1 Q. Are you satisfied with your</p> <p>2 response?</p> <p>3 A. No.</p> <p>4 Q. Do you want to try another answer?</p> <p>5 A. I believe all of the nonrepresented</p> <p>6 employees would have had an E-Mail account and</p> <p>7 access to E-Mail.</p> <p>8 I don't believe -- I'm not sure that</p> <p>9 all of them actually had a PC on their desk.</p> <p>10 Q. Thank you for the clarification.</p> <p>11 A. It was the union employees that -- I</p> <p>12 believe we had some kiosks set up for the non --</p> <p>13 the nonmanagement employees to be able to access,</p> <p>14 but I'm not sure exactly how some of the non --</p> <p>15 nonrepresented management employees, whether</p> <p>16 everyone had a PC --</p> <p>17 Q. Okay.</p> <p>18 A. -- but I believe they all had an</p> <p>19 E-Mail account.</p> <p>20 Q. Do you know approximately when the</p> <p>21 E-Mail system reached that point that, basically,</p> <p>22 all nonmanagement employees had an account?</p> <p>23 A. I do not remember, no.</p> <p>24 Q. Do you remember when you first got</p>
Page 107	Page 109
<p>1 their workplace? Carving out the represented</p> <p>2 employees.</p> <p>3 A. I don't recall whether every</p> <p>4 employee had a computer on their desk. No, I don't</p> <p>5 recall at that point. That's 1998, '99. I can't</p> <p>6 recall.</p> <p>7 Q. How about E-Mail? Let me re-do</p> <p>8 that.</p> <p>9 How about official company E-Mail?</p> <p>10 A. I don't recall whether every</p> <p>11 employee had an account. If they had a</p> <p>12 workstation, my -- to the best of my knowledge,</p> <p>13 they would have had an E-Mail.</p> <p>14 I don't -- can you ask the question</p> <p>15 again? Did you say, just the nonunion employees?</p> <p>16 Q. Yes.</p> <p>17 Could you please read the question</p> <p>18 back?</p> <p>19 MR. MALONE: Let's read him back the</p> <p>20 last couple questions and see where we are, and</p> <p>21 give him his answers, too.</p> <p>22 (Pertinent portion of the record is</p> <p>23 read.)</p> <p>24 BY MR. MALONE:</p>	<p>1 an E-Mail account? Official company E-Mail</p> <p>2 account?</p> <p>3 A. No, I don't, sir.</p> <p>4 Q. That's fine. Thanks.</p> <p>5 I'm going to hand you a document</p> <p>6 which we previously marked as D-22 for</p> <p>7 identification purposes. It's a multi-page</p> <p>8 document. The first page is headed, "Introducing</p> <p>9 The New Cash Balance Retirement Plan," and bears</p> <p>10 the logo of Conectiv.</p> <p>11 Why don't you take a moment to</p> <p>12 review D-22 and I'll ask you a few questions about</p> <p>13 it.</p> <p>14 A. Okay, sir.</p> <p>15 Q. Have you seen D-22 before?</p> <p>16 A. I have.</p> <p>17 Q. Can you recall, to the best of your</p> <p>18 ability, when it was you first saw D-22?</p> <p>19 A. Most recently, I had seen it after</p> <p>20 the first of this year. I don't recall when, prior</p> <p>21 to this year, I saw it. I do recall seeing it, but</p> <p>22 I can't put a time frame to it.</p> <p>23 Q. That's fine.</p> <p>24 Did you have a role in the</p>

28 (Pages 106 to 109)



JAMES R. KREMMELE

<p style="text-align: right;">Page 110</p> <p>1 preparation of D-22.</p> <p>2 A. I don't recall that I did.</p> <p>3 Q. Do you know who was responsible for</p> <p>4 preparing D-22?</p> <p>5 A. I believe -- let me just read one</p> <p>6 more thing.</p> <p>7 First off, I believe this is not one</p> <p>8 document, sir; I believe this is two documents.</p> <p>9 Q. Okay.</p> <p>10 A. I believe pages MWW 00308, MWW</p> <p>11 00309, MWW 00310 are one document --</p> <p>12 Q. You know what? I agree with you.</p> <p>13 A. -- and I --</p> <p>14 Q. 311 is a separate document. I'm not</p> <p>15 quite sure how we got to that point, but let's</p> <p>16 focus on everything except for 311.</p> <p>17 A. Okay.</p> <p>18 I believe this document was prepared</p> <p>19 by the Vanguard Group.</p> <p>20 Q. And do you know approximately when</p> <p>21 it was disseminated?</p> <p>22 A. I do not.</p> <p>23 Q. Do you know how it was disseminated?</p> <p>24 A. Best of my recollection, this would</p>	<p style="text-align: right;">Page 112</p> <p>1 A. I don't recall who was responsible</p> <p>2 for mailing them initially from participants. I --</p> <p>3 I don't recall exactly who mailed them.</p> <p>4 Q. Do you know who prepared them? Was</p> <p>5 it Vanguard or the company or was a third-party</p> <p>6 involved?</p> <p>7 A. I believe Vanguard prepared the</p> <p>8 statements, sir.</p> <p>9 MR. MALONE: That's all I have for</p> <p>10 you on D-22.</p> <p>11 P-4.</p> <p>12 (Exhibit P-4 is marked for</p> <p>13 identification.)</p> <p>14 BY MR. MALONE:</p> <p>15 Q. The court reporter has handed you a</p> <p>16 document which we marked as P-4 for identification</p> <p>17 purposes. It's perhaps six or seven pages long and</p> <p>18 appears to be a series of PowerPoint slides.</p> <p>19 Why don't you take a moment to</p> <p>20 review the document and I'll ask you some</p> <p>21 questions. For the record, P-4 begins on MWW</p> <p>22 00301.</p> <p>23 A. Okay, I'm ready.</p> <p>24 Q. Tell me what P-4 is.</p>
<p style="text-align: right;">Page 111</p> <p>1 have been mailed to participants, sir.</p> <p>2 Q. By Vanguard?</p> <p>3 A. By Vanguard, yes.</p> <p>4 Q. To your recollection, did you</p> <p>5 receive one at home?</p> <p>6 A. I don't recall individually</p> <p>7 receiving one -- this one at home.</p> <p>8 Q. Can you tell me approximately when</p> <p>9 Vanguard issued this document?</p> <p>10 A. From the context of the document, it</p> <p>11 appears that it would have come out in the middle</p> <p>12 of the year 1999, and I get that from the last</p> <p>13 italicized sentence on Page MWW 0308, in the top</p> <p>14 part of the page, where it says, "The cash balance</p> <p>15 plan officially took effect January 1, 1999. You</p> <p>16 recently received a statement showing your opening</p> <p>17 balance in the new plan."</p> <p>18 Q. The statements were mailed</p> <p>19 approximately when?</p> <p>20 A. Approximately, I believe, June of</p> <p>21 '99 -- May/June, '99, to the best of my</p> <p>22 recollection.</p> <p>23 Q. Who was responsible for mailing the</p> <p>24 initial cash balance account statements?</p>	<p style="text-align: right;">Page 113</p> <p>1 A. To the best of my recollection, P-4</p> <p>2 is another presentation that was given at employee</p> <p>3 meetings conducted to communicate the new cash</p> <p>4 balance plan to employees in the summer of 1999.</p> <p>5 Q. So this is the presentation we were</p> <p>6 talking about earlier when I was asking about the</p> <p>7 meetings?</p> <p>8 A. To the best of my recollection, this</p> <p>9 is the presentation, yes.</p> <p>10 Q. Was it handed out to employees?</p> <p>11 A. To the best of my recollection,</p> <p>12 these were the PowerPoint slides that were</p> <p>13 presented and that we also distributed a copy of</p> <p>14 the PowerPoint slides to employees at some point</p> <p>15 during the meeting.</p> <p>16 Q. Was it distributed in this format,</p> <p>17 where you have six slides on a page?</p> <p>18 A. Yes, sir, to the best of my</p> <p>19 recollection.</p> <p>20 Q. Do you recall who prepared the</p> <p>21 PowerPoint presentation?</p> <p>22 A. I do not recall specifically who</p> <p>23 prepared it, no.</p> <p>24 Q. Did you have a role in the</p>

29 (Pages 110 to 113)

JAMES R. KREMMELE

<p style="text-align: right;">Page 114</p> <p>1 preparation of it?</p> <p>2 A. I believe I had -- I had part of the</p> <p>3 review of the presentation, yes.</p> <p>4 Q. Do you recall discussing the</p> <p>5 PowerPoint presentation with representatives of</p> <p>6 Vanguard?</p> <p>7 A. I don't personally recall discussing</p> <p>8 it with Vanguard. I would infer that, as they were</p> <p>9 a presenter in here, that we would have reviewed</p> <p>10 their slides with them, or they would have given us</p> <p>11 their slides of information to present as part of</p> <p>12 this, but I don't recall personally talking with</p> <p>13 Vanguard.</p> <p>14 Q. How about Towers Perrin? Do you</p> <p>15 recall any personal discussion between you and</p> <p>16 representatives of Towers Perrin in the context of</p> <p>17 discussing these slides?</p> <p>18 A. I don't recall personally</p> <p>19 discussing -- preparing the slides with -- with</p> <p>20 Towers Perrin, no.</p> <p>21 Q. Now, you had attended some of the</p> <p>22 employee meetings in or about July of '99 that were</p> <p>23 focused on the roll-out of the new plan, but not</p> <p>24 all of them, is that right?</p>	<p style="text-align: right;">Page 116</p> <p>1 used to set the interest credits, is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. Let me withdraw that and fix that,</p> <p>4 because I didn't quite get that right.</p> <p>5 The rate for 30-year U.S. Treasury</p> <p>6 bonds is relevant to an understanding of the cash</p> <p>7 balance plan because that is the rate used in any</p> <p>8 particular plan year to calculate an employee's</p> <p>9 interest credits in his or her hypothetical</p> <p>10 account, is that correct?</p> <p>11 A. That's one reason why it might be</p> <p>12 relevant, yes.</p> <p>13 Q. Are there others?</p> <p>14 A. I'm not sure that there are, but I</p> <p>15 think that's one of them, as it relates to this</p> <p>16 plan.</p> <p>17 Q. Now, if we look at the slide at the</p> <p>18 top of the left-hand column on the second page of</p> <p>19 P-4, there are bullet points indicating that cash</p> <p>20 balance plans are controversial and have been the</p> <p>21 subject of certain criticisms.</p> <p>22 Do you see that, sir?</p> <p>23 A. On page --</p> <p>24 Q. Page 2, left column, top slide.</p>
<p style="text-align: right;">Page 115</p> <p>1 A. That's correct.</p> <p>2 Q. At the meetings that you attended,</p> <p>3 were the same slides used?</p> <p>4 A. To the best of my recollection, yes,</p> <p>5 this was the presentation.</p> <p>6 Q. Approximately how long was the</p> <p>7 presentation, in terms of duration?</p> <p>8 A. Best of my recollection, it was less</p> <p>9 than an hour for the formal presentation part, sir.</p> <p>10 Q. And then you had a period after that</p> <p>11 part for questions?</p> <p>12 A. Yes, we did.</p> <p>13 Q. Let me direct you to the second page</p> <p>14 of P-4. If you look at the lowest left-hand slide,</p> <p>15 there is a graph there.</p> <p>16 Do you know what that is?</p> <p>17 A. It is difficult to read --</p> <p>18 Q. I agree with that.</p> <p>19 A. -- but, to the best that I can read</p> <p>20 it, I believe it is yields on 30-year U.S. Treasury</p> <p>21 bonds as of certain particular dates in time.</p> <p>22 Q. And 30-year U.S. Treasury bonds were</p> <p>23 relevant for purposes of the class -- or the cash</p> <p>24 balance plan because that was the index that was</p>	<p style="text-align: right;">Page 117</p> <p>1 A. Oh, okay.</p> <p>2 Yes, I do see that.</p> <p>3 Q. But the next slide subsequent to</p> <p>4 that comments on certain facts that are intended to</p> <p>5 rebut the criticisms, does it not?</p> <p>6 MS. YU: Objection to form.</p> <p>7 THE WITNESS: Could you read that</p> <p>8 back for me, please?</p> <p>9 (Pertinent portion of the record is</p> <p>10 read.)</p> <p>11 BY MR. MALONE:</p> <p>12 Q. Let me fix it. I gave you an</p> <p>13 ambiguous question, depending on which way you move</p> <p>14 around the page.</p> <p>15 I had focused you first on the slide</p> <p>16 in the upper left-hand corner of Page 2 of P-4,</p> <p>17 which recounted certain controversial aspects of</p> <p>18 the cash balance plan and criticisms of it. The</p> <p>19 slide that comes directly beneath that outlines</p> <p>20 facts that are intended to rebut those criticisms,</p> <p>21 does it not?</p> <p>22 MS. YU: Objection to form.</p> <p>23 THE WITNESS: I don't think -- no.</p> <p>24 No, I don't think so.</p>

30 (Pages 114 to 117)

JAMES R. KREMMELE

<p style="text-align: right;">Page 118</p> <p>1 BY MR. MALONE:</p> <p>2 Q. So, for example, the statement that</p> <p>3 "The new program is not designed to provide cost</p> <p>4 savings for Conectiv" is not intended to address</p> <p>5 the criticism that cash balance plans mask cost</p> <p>6 cutting?</p> <p>7 MS. YU: Objection to form.</p> <p>8 THE WITNESS: No, I don't believe</p> <p>9 that's what it was intended to do directly, no.</p> <p>10 BY MR. MALONE:</p> <p>11 Q. Well, what was it intended to do, in</p> <p>12 your view?</p> <p>13 A. I think this -- in my -- best of my</p> <p>14 recollection, this information was put together to</p> <p>15 distinguish and -- and frame the retirement</p> <p>16 plans -- the new retirement plans that the company</p> <p>17 was putting in place as the plans for the company.</p> <p>18 MR. MALONE: Can I hear the answer</p> <p>19 read back?</p> <p>20 (Pertinent portion of the record is</p> <p>21 read.)</p> <p>22 BY MR. MALONE:</p> <p>23 Q. Distinguish from what?</p> <p>24 A. The previous retirement plans that</p>	<p style="text-align: right;">Page 120</p> <p>1 A. I believe I do, yes.</p> <p>2 Q. What is your understanding of that</p> <p>3 graph on Page 2 of P-4 in the upper right-hand</p> <p>4 corner?</p> <p>5 A. I believe it is trying to show</p> <p>6 accrual patterns of benefits between two different</p> <p>7 plans.</p> <p>8 Q. Do you know any of the data or</p> <p>9 assumptions that went into this graph? This graph</p> <p>10 being the one in the upper right-hand corner of</p> <p>11 Page 2 of P-4.</p> <p>12 A. No, I do not.</p> <p>13 Q. Do you know who prepared the graph?</p> <p>14 A. No, I do not.</p> <p>15 Q. Do you know whether it was prepared</p> <p>16 internally or by Towers Perrin?</p> <p>17 A. I do not.</p> <p>18 Q. Are you familiar with the measures</p> <p>19 that have been undertaken by Conectiv or Pepco</p> <p>20 Holdings to gather documents that might be relevant</p> <p>21 to this litigation?</p> <p>22 A. I can -- I'm aware of what my</p> <p>23 efforts were, related to that, sir.</p> <p>24 Q. Could you describe what your efforts</p>
<p style="text-align: right;">Page 119</p> <p>1 the company had had in place.</p> <p>2 Q. Those are the heritage plans at</p> <p>3 Atlantic City Electric and Delmarva?</p> <p>4 A. In part, yes.</p> <p>5 Q. Let me move you to the next slide</p> <p>6 immediately to the right, so that we are in the</p> <p>7 middle of the right-hand column of Page 2 of P-4.</p> <p>8 A. I'm with you.</p> <p>9 Q. The first bullet point indicates</p> <p>10 that the "New cash balance plan provides higher</p> <p>11 than average annual contribution credit."</p> <p>12 Was that intended to rebut some of</p> <p>13 the criticisms of cash balance plans alluded to in</p> <p>14 one of the earlier slides?</p> <p>15 MS. YU: Objection to the form.</p> <p>16 THE WITNESS: I don't believe -- I</p> <p>17 don't believe so, no, sir. Not to the best of my</p> <p>18 recollection.</p> <p>19 BY MR. MALONE:</p> <p>20 Q. In the upper right-hand corner of</p> <p>21 Page 2 of P-4 there is a line graph there.</p> <p>22 Do you see that, sir?</p> <p>23 A. Barely. Yes.</p> <p>24 Q. Do you know what that is?</p>	<p style="text-align: right;">Page 121</p> <p>1 were.</p> <p>2 A. To review and look through archived</p> <p>3 historical documents and information and collect</p> <p>4 such information.</p> <p>5 Q. Did you locate a copy of these</p> <p>6 PowerPoint slides as part of that process?</p> <p>7 A. I don't recall whether or not I</p> <p>8 found that -- this particular slide as part of</p> <p>9 that, sir.</p> <p>10 Q. If you wanted to find the original</p> <p>11 PowerPoint slides so that they would be big enough</p> <p>12 that we all could read them, is there a particular</p> <p>13 person we'd go to at the company?</p> <p>14 A. I would have to fall back to the</p> <p>15 manager of compensation and benefits for the</p> <p>16 company, sir.</p> <p>17 Q. And who is that presently?</p> <p>18 A. His name is Mike Sullivan.</p> <p>19 Q. Thank you. You had answered that</p> <p>20 for me earlier.</p> <p>21 Do you know whether Mr. Sullivan was</p> <p>22 contacted as part of the defendants' efforts to</p> <p>23 collect documents relevant to this litigation?</p> <p>24 A. I don't -- other than the</p>

31 (Pages 118 to 121)

JAMES R. KREMMELE

Page 122	Page 124
<p>1 discussions that I had with him as part of</p> <p>2 reviewing documents, I don't know what other</p> <p>3 contact might have been had, sir.</p> <p>4 Q. Could you summarize what discussions</p> <p>5 you had with Mr. Sullivan on the effort to locate</p> <p>6 documents relevant to this litigation?</p> <p>7 A. Other than letting him know that, as</p> <p>8 part of my job assignments or part my work</p> <p>9 assignments, that I was working assisting counsel,</p> <p>10 in terms of locating information, and that, you</p> <p>11 know, if I needed any assistance from any of his</p> <p>12 team members, just so that he would know what was</p> <p>13 going on in advance, from a courtesy standpoint.</p> <p>14 Q. Did he furnish you with any</p> <p>15 documents?</p> <p>16 A. Not to my knowledge. I don't recall</p> <p>17 that he provided me anything, no.</p> <p>18 Q. Did you convey all the documents</p> <p>19 that were located to counsel or did you convey some</p> <p>20 and others convey others?</p> <p>21 A. I conveyed everything that I</p> <p>22 identified to counsel.</p> <p>23 I can't speak to others.</p> <p>24 Q. Let me take you to MWW 00305 on P-4.</p>	<p>1 Q. Which, at the time, was Towers</p> <p>2 Perrin?</p> <p>3 A. That's correct.</p> <p>4 Q. And currently is Watson Wyatt?</p> <p>5 A. That's correct.</p> <p>6 Q. Now, you used these slides</p> <p>7 personally at certain meetings, is that correct?</p> <p>8 A. I was in attendance at certain</p> <p>9 meetings where these slides were used, yes.</p> <p>10 Q. Were you a presenter at certain</p> <p>11 meetings?</p> <p>12 A. Yes.</p> <p>13 Q. And, when you did the presentation,</p> <p>14 did you use these slides?</p> <p>15 A. Yes.</p> <p>16 Q. Okay.</p> <p>17 What I'd like you to do, if you</p> <p>18 could, is page through and tell me if you can</p> <p>19 identify particular slides that you personally did</p> <p>20 not handle because you asked Towers Perrin to</p> <p>21 handle, because you asked Vanguard to handle.</p> <p>22 Anything on Page 1?</p> <p>23 A. Make sure I understand your</p> <p>24 question. You are asking me -- I'll restate it to</p>
Page 123	Page 125
<p>1 MS. HOFFMAN: Four or 5?</p> <p>2 MR. MALONE: Five.</p> <p>3 BY MR. MALONE:</p> <p>4 Q. The middle and lower slides in the</p> <p>5 right-hand column have some tables. One is headed,</p> <p>6 "Conectiv Cash Balance Account vs. Prior Plan-</p> <p>7 Delmarva," and the other is "Conectiv Cash Balance</p> <p>8 Account vs. Prior Plan-Atlantic."</p> <p>9 Do you see those?</p> <p>10 A. I believe so, yes, sir.</p> <p>11 Q. Do you know what the data sources</p> <p>12 underlying these tables were?</p> <p>13 A. The specific data sources for these?</p> <p>14 I don't know specifically, no.</p> <p>15 Q. Do you have any knowledge at all as</p> <p>16 to what the source data there is? Where it comes</p> <p>17 from?</p> <p>18 A. I could -- I could hypothesize. I</p> <p>19 do not know specifically who prepared the tables.</p> <p>20 Q. If you were going to prepare tables</p> <p>21 like this, where would you go to get the data?</p> <p>22 A. This information that we are looking</p> <p>23 at here, I would -- I would expect that this was</p> <p>24 provided by the company's actuary.</p>	<p>1 you. You are asking me to state which of these I</p> <p>2 personally would have presented and which of these</p> <p>3 would have been presented by another party --</p> <p>4 Q. Bingo.</p> <p>5 A. -- is that correct?</p> <p>6 Q. That's correct.</p> <p>7 A. At this point I don't recall which</p> <p>8 ones I would have done. Again, I could</p> <p>9 hypothesize, based on some of the topics.</p> <p>10 For example, the ones that are</p> <p>11 titled "The Vanguard," I would hypothesize that</p> <p>12 Vanguard was a presenter, but, other than that, I</p> <p>13 don't recall who presented what this many years</p> <p>14 ago.</p> <p>15 Q. Okay. That's all I'm going to have</p> <p>16 for you on that one.</p> <p>17 I've handed you D-13, which appears</p> <p>18 to be another set of P-4.</p> <p>19 Would you agree with that?</p> <p>20 A. It appears to be, yes, sir.</p> <p>21 Q. Your name is misspelled, I see, on</p> <p>22 the first page there.</p> <p>23 Do you see that?</p> <p>24 A. I see a reference to a Jim Krimble,</p>

32 (Pages 122 to 125)

JAMES R. KREMMELE

<p style="text-align: right;">Page 126</p> <p>1 yes.</p> <p>2 Q. That's not your name.</p> <p>3 Do you recognize that handwriting?</p> <p>4 A. I do not, no, sir.</p> <p>5 Q. And, if you go to MWW 00221, do you</p> <p>6 see handwriting at the bottom?</p> <p>7 A. I do, yes.</p> <p>8 Q. Do you recognize that?</p> <p>9 A. I do not recognize it, no.</p> <p>10 Q. That's all I have for you on D-13.</p> <p>11 Thank you.</p> <p>12 I've handed you what's been marked</p> <p>13 D-19 for identification purposes. Why don't you</p> <p>14 take a moment to look at it. It's actually kind of</p> <p>15 long, so I'm not going to tell you to read the</p> <p>16 whole thing, but you can look at any part of it you</p> <p>17 want.</p> <p>18 A. Okay.</p> <p>19 Q. Have you seen this before?</p> <p>20 A. Yes, I have.</p> <p>21 Q. And what is D-19?</p> <p>22 A. D-19 was the company -- or</p> <p>23 Conectiv's summary plan description for the cash</p> <p>24 balance sub-plan of the Conectiv retirement plan.</p>	<p style="text-align: right;">Page 128</p> <p>1 Q. In-house or --</p> <p>2 A. -- but the compensation benefits</p> <p>3 department overall, and human resources, would have</p> <p>4 been accountable to get it done, but I believe we</p> <p>5 utilized legal counsel to draft this document.</p> <p>6 Q. Was that someone in-house or an</p> <p>7 outside firm?</p> <p>8 A. I believe it was -- it was an</p> <p>9 outside firm.</p> <p>10 Q. How was the summary plan description</p> <p>11 disseminated to employees in connection with the</p> <p>12 cash balance sub-plan?</p> <p>13 A. To the best of my recollection, the</p> <p>14 summary plan descriptions were prepared and printed</p> <p>15 and distributed to employees. I do not recall</p> <p>16 whether they were mailed or whether they were made</p> <p>17 available or available upon request, but I know</p> <p>18 that they were printed and -- I just don't recall</p> <p>19 the exact method of distribution.</p> <p>20 Q. Are there records kept that you</p> <p>21 could look at that would tell you how particular</p> <p>22 summary plan descriptions were disseminated to the</p> <p>23 employees?</p> <p>24 A. I don't believe so -- that there</p>
<p style="text-align: right;">Page 127</p> <p>1 Q. Can you tell me approximately when</p> <p>2 D-19 was issued?</p> <p>3 A. I do not recall.</p> <p>4 Q. Were you involved in the preparation</p> <p>5 of D-19?</p> <p>6 A. I don't recall that I was involved.</p> <p>7 Q. Historically, in the period of 1997</p> <p>8 to the present, do you periodically work on summary</p> <p>9 plan descriptions?</p> <p>10 A. I have, yes.</p> <p>11 Q. Do you recall working on summary</p> <p>12 plan descriptions with respect to the pension plan?</p> <p>13 A. I recall reviewing some of the</p> <p>14 documents, some of the information in summary plan</p> <p>15 descriptions. I just don't recall the time frame,</p> <p>16 when, sir, or whether I did on this document.</p> <p>17 Q. In the period from late 1997 through</p> <p>18 the end of calendar year 1999, were there people at</p> <p>19 Conectiv that were normally responsible for the</p> <p>20 preparation of summary plan descriptions?</p> <p>21 A. Responsible in -- from the</p> <p>22 standpoint that they were accountable to do it. I</p> <p>23 believe that we used -- utilized legal counsel to</p> <p>24 actually draft this document, sir --</p>	<p style="text-align: right;">Page 129</p> <p>1 are, no, sir.</p> <p>2 (Exhibit P-5 is marked for</p> <p>3 identification.)</p> <p>4 BY MR. MALONE:</p> <p>5 Q. The court reporter has handed you a</p> <p>6 document marked P-5 for identification purposes.</p> <p>7 Can you tell me what it is?</p> <p>8 A. A document prepared by Conectiv,</p> <p>9 summary plan descriptions for the -- for three</p> <p>10 different retirement sub-plans.</p> <p>11 Q. Let's just very quickly touch on</p> <p>12 the -- we spent a fair amount of time on the cash</p> <p>13 balance summary. Let's quickly touch on the</p> <p>14 Delmarva and ACE sub-plans.</p> <p>15 Who was covered by those?</p> <p>16 A. You need to give me a time period so</p> <p>17 that I could answer that, sir.</p> <p>18 Q. Let's focus on the effective date</p> <p>19 when the cash balance sub-plan went into place,</p> <p>20 which is January 1, 1999.</p> <p>21 At that time were there also two</p> <p>22 other sub-plans?</p> <p>23 A. Yes, there were.</p> <p>24 Q. One was Delmarva and one was ACE?</p>

33 (Pages 126 to 129)



JAMES R. KREMMELE

<p style="text-align: right;">Page 130</p> <p>1 A. Yes, they were.</p> <p>2 Q. Which employees were covered by the</p> <p>3 Delmarva sub-plan as of January 1, 1999?</p> <p>4 A. Represented employees in the company</p> <p>5 with Local 1238 and 1307.</p> <p>6 Q. Has that changed between 1999 and</p> <p>7 the present? Let me unpack that and do this a</p> <p>8 different way.</p> <p>9 Is there still a Delmarva sub-plan?</p> <p>10 A. There is.</p> <p>11 Q. Has the scope of that plan, in terms</p> <p>12 of the categories of employees covered by it,</p> <p>13 changed since 1999?</p> <p>14 A. In terms of the categories that are</p> <p>15 covered, to the best of my knowledge, it has not.</p> <p>16 Q. Okay.</p> <p>17 A. To the employees that are covered.</p> <p>18 Q. Let's shift to the ACE sub-plan. As</p> <p>19 of January 1, 1999, what employees would be covered</p> <p>20 by the ACE sub-plan?</p> <p>21 A. Represented employees with IBEW</p> <p>22 Local 210.</p> <p>23 Q. Has that changed since January 1,</p> <p>24 1999?</p>	<p style="text-align: right;">Page 132</p> <p>1 employees or not?</p> <p>2 A. I have no reason to think that it</p> <p>3 was not issued to employees. There is -- I see no</p> <p>4 markings of "Draft" or "Confidential Copy" or</p> <p>5 anything on this that would lead me to believe that</p> <p>6 it was not issued to them, no.</p> <p>7 Q. Let me send you to MWW 00073 and 74</p> <p>8 for a second. At the bottom, last line on the</p> <p>9 page, it says, "Employer identification number,"</p> <p>10 then it's blank.</p> <p>11 A. Yes.</p> <p>12 Q. And then on the subsequent page, the</p> <p>13 participating employer, the employer identification</p> <p>14 number, and the name and address of the trustee are</p> <p>15 also absent, is that correct?</p> <p>16 A. Appears to be, yes.</p> <p>17 Q. Would it be reasonable to infer that</p> <p>18 this was not formally issued, based on those</p> <p>19 omissions?</p> <p>20 A. No, I wouldn't make that assumption.</p> <p>21 (The following portion of this</p> <p>22 transcript has been designated confidential.)</p> <p>23</p> <p>24</p>
<p style="text-align: right;">Page 131</p> <p>1 A. In terms of who's covered, no.</p> <p>2 Q. Can you tell me approximately when</p> <p>3 Plaintiffs-5 was issued?</p> <p>4 A. Sir, I don't -- other than going</p> <p>5 through the whole document, I don't see -- it's not</p> <p>6 obvious to me there is a date of issuance on this.</p> <p>7 I could surmise, but I don't --</p> <p>8 Q. Let me send you to MWW 00056, which</p> <p>9 would be the second physical page of the document.</p> <p>10 A. Okay.</p> <p>11 Q. In the lower right-hand corner there</p> <p>12 is "PHLEGAL," followed by numbers and some other</p> <p>13 file identification.</p> <p>14 A. I see that, yes.</p> <p>15 Q. Do you know what that file</p> <p>16 identification means?</p> <p>17 A. To the best of my knowledge, it</p> <p>18 identifies a legal document -- a Pepper Hamilton</p> <p>19 legal document.</p> <p>20 Q. Do you know where the electronic</p> <p>21 version of this document would be lodged?</p> <p>22 A. I have no idea.</p> <p>23 Q. Can you tell, from looking at</p> <p>24 this -- at P-5, whether it was formally issued to</p>	<p style="text-align: right;">Page 133</p> <p>1 (Exhibit P-6 is marked for</p> <p>2 identification.)</p> <p>3 MR. MALONE: The court reporter has</p> <p>4 handed you, Mr. Kremmel, a document we marked</p> <p>5 Plaintiffs-6 for identification purposes. It's</p> <p>6 headed, "Copy, Pepco Holdings, Inc., B L England</p> <p>7 Management Enhanced Severance Plan." Why don't you</p> <p>8 take a look at it and I will ask you some questions</p> <p>9 about it.</p> <p>10 I should note, for the record, that</p> <p>11 the document has been designated as confidential</p> <p>12 under the Protective Order, and we'll need to</p> <p>13 designate the discussion of it in the transcript as</p> <p>14 confidential, as well.</p> <p>15 (Discussion is held off the record.)</p> <p>16 THE WITNESS: Okay, sir, I'm ready.</p> <p>17 BY MR. MALONE:</p> <p>18 Q. Have you seen Plaintiffs-6 before?</p> <p>19 A. I have not.</p> <p>20 Q. Do you know what the B L England is</p> <p>21 a reference to?</p> <p>22 A. Best of my knowledge, it's referring</p> <p>23 to the B L England generating station located in</p> <p>24 southern New Jersey.</p>

34 (Pages 130 to 133)



## CONFIDENTIAL

<p style="text-align: right;">Page 134</p> <p>1 Q. Are you familiar with a B L England 2 Management Enhanced Severance Plan? 3 A. Not specifically, until I've seen 4 this document. 5 Q. Were you aware that there was a 6 reduction in force going on at B L England? 7 A. I was, yes. 8 Q. Did you understand that, as part of 9 the reduction in force, some employees would be 10 offered a severance program? 11 A. I was. 12 Q. Did you understand that the 13 severance program would be conditioned upon their 14 granting a release? 15 A. That is the standard practice of the 16 company, yes, sir. 17 Q. Do you know who prepared PL-6? 18 A. Who individually prepared it? 19 I do not, sir. 20 Q. Over the course of your employment 21 at Conectiv, and now Pepco Holdings, you've had 22 various benefits responsibilities. In that 23 context, have you become familiar with the 24 company's general practice in handling severance</p>	<p style="text-align: right;">Page 136</p> <p>1 with in the past in that context? 2 A. The attorney that I've worked with's 3 name is Susan Power. 4 Q. Is she still there? 5 A. Yes, she is. 6 Q. Let me direct your attention to the 7 second page of P-6 for a second. In Paragraph 3, 8 part of the release covers matters arising under 9 the Employee Retirement Income Security Act of 10 1974. 11 Do you know whether employees who 12 were tendered a release, in the form of 13 Plaintiffs-6, were advised that there was pending 14 litigation arising under that statute? 15 MS. YU: Could you read that back? 16 MR. MALONE: Sure. 17 (Pertinent portion of the record is 18 read.) 19 MS. YU: Just this particular one? 20 MR. MALONE: Just this particular -- 21 a release in the form of PL-6. 22 MS. YU: Any release in the form of 23 PL-6? 24 MR. MALONE: Yes.</p>
<p style="text-align: right;">Page 135</p> <p>1 packages? 2 A. I have, yes. 3 Q. And is it generally customary that 4 the company has a release when it offers a 5 severance package? 6 A. It is. 7 Q. Is there a particular pattern of who 8 prepares the release? Whether it's an internal 9 company lawyer or outside counsel? 10 A. In my experience, it is usually 11 internal counsel for the company. 12 Q. Are there particular internal 13 lawyers that have that as their personal 14 responsibility? 15 A. Not that I'm aware of, that there is 16 one attorney that specifically does releases, no. 17 Not to my knowledge. 18 Q. Have you worked with a particular 19 in-house counsel on releases in the past? 20 A. Yes, I have. 21 Q. In the context of severance 22 programs? 23 A. Yes, I have. 24 Q. Can you tell me who you've worked</p>	<p style="text-align: right;">Page 137</p> <p>1 MS. YU: Objection as to form. 2 THE WITNESS: I did not handle these 3 releases, so I don't have any knowledge of what 4 they were and weren't advised, sir. 5 BY MR. MALONE: 6 Q. If you wanted to find out who was 7 responsible for dealing with the employees who 8 received a release in connection with the B L 9 England Management Enhanced Severance Plan, who 10 would you contact at the company? 11 A. At this point I would probably ask 12 our legal -- the company's legal department. 13 Q. Would you contact Ms. Power? 14 A. I would contact Ms. Power. 15 Q. Do you know approximately how many 16 employees have received a proposed release as part 17 of the B L England Management Enhanced Severance 18 Plan? 19 A. I do not have personal knowledge of 20 that, no. 21 (Exhibit P-7 is marked for 22 identification.) 23 BY MR. MALONE: 24 Q. The court reporter has handed you a</p>

35 (Pages 134 to 137)

CONFIDENTIAL

<p style="text-align: right;">Page 138</p> <p>1 document that we've marked Plaintiffs-7 for 2 identification. It has the logo, Pepco Holdings, 3 Inc. on the top and says, "General Release." 4 Have you seen Plaintiffs-7 before? 5 A. I don't recall seeing this, no, sir. 6 Q. This particular release, which is 7 P-7, has been signed and dated by a particular 8 employee, apparently a Mr. Gene Carey. 9 Do you see that? 10 A. I do see that, yes. 11 Q. Have you seen a document similar in 12 form to P-7 that has not been signed and dated by 13 an individual employee? 14 A. Not that I recall. 15 Q. Do you know who Mr. Carey is? 16 A. I do not. 17 Q. Does the company have standard forms 18 for releases that it uses in connection with 19 severance programs? 20 A. I believe that it does, yes. 21 Q. Is this document, being P-7, similar 22 to the standard forms that you are familiar with? 23 A. I have no reason to think -- to 24 think that it's not.</p>	<p style="text-align: right;">Page 140</p> <p>1 BY MR. MALONE: 2 Q. We had a break. Is there anything 3 that you need to correct in your prior testimony? 4 A. Not at this time. 5 Q. Let me direct your attention to what 6 we've marked as Plaintiffs Exhibit 8, which is a 7 series of account statements that, although they 8 are not marked as confidential, we previously 9 agreed should be treated as such. 10 Let me direct your attention to the 11 first one -- first page of Plaintiffs Exhibit 8. 12 Have you seen this before? 13 A. I believe I have, yes. 14 Q. Were you asked to gather account 15 statements for the named Plaintiffs in these cases 16 on behalf of counsel? 17 A. I was not. 18 Q. Do you know who was? 19 A. No, I don't. 20 Q. I note on the first page it 21 indicates that this is a revised statement. 22 Do you see that? It would be 23 underneath the confirmation number on the first 24 page and above your cash balance account.</p>
<p style="text-align: right;">Page 139</p> <p>1 Q. Do you know how many employees have 2 signed a release in the form of Plaintiffs-7 since 3 September of 2005? 4 A. I do not. 5 Q. Let me direct your attention to Page 6 2 of Plaintiffs-7, and specifically Subparagraph B, 7 which provides, as part of the release, that there 8 is a release of matters under the Employee 9 Retirement Income Security Act of 1974. 10 And my question, sir, is simply, do 11 you know whether Mr. Gene Carey was advised that 12 this litigation was pending prior to the time that 13 he executed his release? 14 A. I had no knowledge of Mr. Carey's 15 severance, so I can't speak to that. 16 MR. MALONE: For the record, P-7 was 17 also designated as confidential, so that the 18 portion of the transcript covering my discussion of 19 P-7 with the witness should likewise be designated 20 as confidential. 21 (Recess called at 2:53 p.m.) 22 (Resumed at 3:04 p.m.) 23 (Exhibit P-8 is marked for 24 identification.)</p>	<p style="text-align: right;">Page 141</p> <p>1 A. I do see that, yes. 2 Q. Do you know as of when it would have 3 been revised? 4 A. I do not, no. 5 Q. The first page of Plaintiffs-8 6 appears to be the account statement reflecting the 7 credits that were applied to Mr. Charles' account 8 following the conclusion of 2000. 9 Is that correct? 10 A. Following the conclusion of the 11 year -- from January 1st, 2000 through December 31, 12 2000, yes. 13 Q. And those account statements are 14 generally issued in the subsequent year, correct? 15 A. That's correct, yes. 16 Q. Page 1 of Plaintiffs-8 has the logo 17 of Pepco Holdings on it, does it not? 18 A. It does, yes. 19 Q. As of January of 2001, was Pepco 20 Holdings formally affiliated with Conectiv? 21 A. No, it was not. 22 Q. When did Pepco Holdings acquire 23 Conectiv? 24 A. I believe it was August of 2002,</p>

36 (Pages 138 to 141)

CONFIDENTIAL

<p style="text-align: right;">Page 142</p> <p>1 sir. Best of my knowledge.</p> <p>2 Q. Do you know how the account</p> <p>3 statements which comprise Plaintiffs-8 were</p> <p>4 generated?</p> <p>5 A. Based on the appearance of the</p> <p>6 document, they appear to have been prepared by</p> <p>7 Vanguard, who is the administrator of the cash</p> <p>8 balance plan.</p> <p>9 Q. Let me just focus on the first two</p> <p>10 pages of Plaintiffs-8, which is a statement issued</p> <p>11 to Mr. Charles reflecting the changes to his</p> <p>12 account following the conclusion of 2000.</p> <p>13 Does that appear to be a Xerox copy</p> <p>14 of what he would have received in early 2001?</p> <p>15 A. No, not to me. No.</p> <p>16 Q. In light of the Pepco Holdings logo?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know whether Vanguard keeps</p> <p>19 hard copies of all of the account statements for</p> <p>20 participants?</p> <p>21 A. I do not believe that they do. To</p> <p>22 the best of my recollection.</p> <p>23 Q. Do you know whether Vanguard</p> <p>24 maintained the opening account statements for all</p>	<p style="text-align: right;">Page 144</p> <p>1 understanding, would they be able to furnish me</p> <p>2 with that?</p> <p>3 A. I believe so, yes.</p> <p>4 Q. Did Conectiv retain hard copies of</p> <p>5 any employee statements?</p> <p>6 A. Not of the employee statements, no,</p> <p>7 sir, not to the best of my recollection.</p> <p>8 (End of confidential portion of</p> <p>9 transcript.)</p>
<p style="text-align: right;">Page 143</p> <p>1 participants?</p> <p>2 A. I don't believe that they did, sir.</p> <p>3 I don't believe that they retained copies of the</p> <p>4 statement, itself, no.</p> <p>5 Q. To your knowledge, does Vanguard</p> <p>6 still retain, in electronic form, copies of the</p> <p>7 original opening statements of the plan</p> <p>8 participants?</p> <p>9 A. It's my understanding that they do</p> <p>10 not.</p> <p>11 Q. And on what is that understanding</p> <p>12 based?</p> <p>13 A. Just my understanding of their</p> <p>14 records. They keep an electronic -- the</p> <p>15 quantifiable documentation and the personal</p> <p>16 information, but they don't have an archive that</p> <p>17 has copies of the statements in them.</p> <p>18 That was my understanding when I was</p> <p>19 benefits manager. What's happened since then -- it</p> <p>20 may have changed, but that was my understanding</p> <p>21 when I was benefits manager.</p> <p>22 Q. If I wanted to go to Vanguard and</p> <p>23 ask them to give me the data that appeared on one</p> <p>24 of my client's opening statements, to your</p>	<p style="text-align: right;">Page 145</p> <p>1 (Exhibit P-9 is marked for</p> <p>2 identification.)</p> <p>3 BY MR. MALONE:</p> <p>4 Q. The court reporter has handed you a</p> <p>5 document we marked Plaintiffs-9 for identification</p> <p>6 purposes. Could you take a moment to review it and</p> <p>7 tell me if you know what it is.</p> <p>8 A. It appears to be the plan document</p> <p>9 for the Conectiv retirement plan.</p> <p>10 Q. Directing your attention to the last</p> <p>11 page of the exhibit, there is a signature there.</p> <p>12 A. Yes.</p> <p>13 Q. That's Mr. Cain's signature?</p> <p>14 A. To the best of my knowledge, yes.</p> <p>15 Q. Are you familiar with his signature?</p> <p>16 A. That's what I recall it being, to</p> <p>17 the best of my knowledge, yes.</p> <p>18 Q. To your knowledge, when was the plan</p> <p>19 document for the Conectiv retirement plan put in</p> <p>20 its final form?</p> <p>21 MS. YU: Objection to the form.</p> <p>22 THE WITNESS: I don't recall the</p> <p>23 exact date, sir. This document is dated</p> <p>24 December 10th, but I'm not sure that this was that</p>

37 (Pages 142 to 145)

JAMES R. KREMMELE

<p style="text-align: right;">Page 146</p> <p>1 document that you are referring to.</p> <p>2 BY MR. MALONE:</p> <p>3 Q. Did you have a role in preparing the</p> <p>4 plan document?</p> <p>5 A. Only -- only as part of -- from a</p> <p>6 review standpoint, sir. I did not draft it.</p> <p>7 Q. I understand.</p> <p>8 Who else do you know that was</p> <p>9 responsible for reviewing the form of the document</p> <p>10 internally at Conectiv?</p> <p>11 A. Personally, I do not recall who all</p> <p>12 reviewed it at the time.</p> <p>13 Q. Do you remember anyone else who</p> <p>14 reviewed it beside yourself?</p> <p>15 A. Not -- not to the best of my</p> <p>16 knowledge, no.</p> <p>17 (Exhibit P-10 is marked for</p> <p>18 identification.)</p> <p>19 BY MR. MALONE:</p> <p>20 Q. The court reporter has handed you</p> <p>21 what we've marked Plaintiffs-10 for identification</p> <p>22 purposes.</p> <p>23 Could you take a moment to review</p> <p>24 Plaintiffs-10 and then I'll ask you a few questions</p>	<p style="text-align: right;">Page 148</p> <p>1 A. I believe I had a role in reviewing</p> <p>2 the plan, yes, sir.</p> <p>3 Q. Do you recall anyone else internally</p> <p>4 at Conectiv who was responsible for reviewing</p> <p>5 Plaintiffs-10?</p> <p>6 A. I do not, no.</p> <p>7 Q. Do you recall discussing</p> <p>8 Plaintiffs-10 with Mr. Cain?</p> <p>9 A. I do not recall any conversations</p> <p>10 discussing that with Mr. Cain, no, at this time.</p> <p>11 (Exhibit P-11 is marked for</p> <p>12 identification.)</p> <p>13 BY MR. MALONE:</p> <p>14 Q. Here is what we are going to do. If</p> <p>15 you look at this document, you are going to see at</p> <p>16 the bottom a little SEC signature.</p> <p>17 Do you see that?</p> <p>18 A. Yes, I do.</p> <p>19 Q. And if you look in the parentheses</p> <p>20 right before the date, there will be page numbers</p> <p>21 there.</p> <p>22 A. Yes.</p> <p>23 Q. So, the first page, you got 1 of</p> <p>24 236.</p>
<p style="text-align: right;">Page 147</p> <p>1 about it.</p> <p>2 A. Okay, I think I'm ready, sir.</p> <p>3 Q. Have you seen Plaintiffs-10 before?</p> <p>4 A. I believe I have, yes.</p> <p>5 Q. What is it?</p> <p>6 A. It's the Cash Balance -- Conectiv</p> <p>7 Cash Balance Sub-Plan of the Conectiv Retirement</p> <p>8 Plan.</p> <p>9 Q. This is the official plan document</p> <p>10 for the cash balance sub-plan, as you understand</p> <p>11 it?</p> <p>12 A. I believe it is so -- it is, yes,</p> <p>13 sir.</p> <p>14 Q. Let me direct your attention, if I</p> <p>15 might, to Page PHI 1570.</p> <p>16 A. Okay.</p> <p>17 Q. Is that Mr. Cain's signature there?</p> <p>18 A. To the best of my recollection, yes.</p> <p>19 Q. And on the subsequent page, 1571?</p> <p>20 A. To the best of my recollection, yes.</p> <p>21 Q. And on the following page, 1572?</p> <p>22 A. To the best of my recollection, yes.</p> <p>23 Q. Did you have a role in the</p> <p>24 preparation of Plaintiffs-10?</p>	<p style="text-align: right;">Page 149</p> <p>1 A. That's what I see.</p> <p>2 Q. Let's go to 49 of 236 and 50 of 236.</p> <p>3 A. I'm on Page 49, I think.</p> <p>4 Q. You have to use these numbers. The</p> <p>5 SEC --</p> <p>6 A. Oh, I'm sorry.</p> <p>7 Q. The documents don't paginate</p> <p>8 correctly when you download them from their</p> <p>9 website.</p> <p>10 A. What pages, again, sir?</p> <p>11 Q. 49 of 236, using the little</p> <p>12 parenthetical on the bottom of the page.</p> <p>13 A. I believe I have it.</p> <p>14 Q. If you have the right page in front</p> <p>15 of you, there should be, in the middle of it,</p> <p>16 roughly, italicized, the phrase, "Cash balance plan</p> <p>17 litigation."</p> <p>18 A. I see it.</p> <p>19 Q. What I want you to do is I want you</p> <p>20 to read that section, continuing over onto the</p> <p>21 subsequent page, which would be number 50 of 236,</p> <p>22 and I'm going to ask you some questions about it.</p> <p>23 Now, by directing your attention to</p> <p>24 that piece of this document, that's not intended to</p>

38 (Pages 146 to 149)

JAMES R. KREMMELE

<p style="text-align: right;">Page 150</p> <p>1 say you can't look at something else, if you need  2 it to understand a question, understand the  3 context, or anything else. It's simply intended to  4 focus you on one place, so that I'm not having you  5 read a 236-page document.  6 A. I appreciate that.  7 Q. Okay.  8 A. Okay, I've reviewed it.  9 Q. This section of the 10-K discusses  10 cash balance plan litigation, does it not?  11 MS. YU: 10-Q.  12 THE WITNESS: This is a 10-Q.  13 BY MR. MALONE:  14 Q. I'm sorry.  15 But the passage I directed your  16 attention to discusses cash balance plan  17 litigation?  18 A. I believe that, to my reading of it,  19 yes, sir.  20 Q. Do you understand that to relate to  21 this case?  22 A. I do, yes.  23 Q. Did you have a role in preparing  24 this section of the SEC filing?</p>	<p style="text-align: right;">Page 152</p> <p>1 Q. Do you know what data they used to  2 calculate that number?  3 A. I don't know directly what data they  4 used, no.  5 Q. Do you know any formula or  6 assumptions that went into the calculation of the  7 \$12 million estimate?  8 A. I'm not sure that I do, no.  9 Q. If you wanted to find out how that  10 number was generated, the \$12 million estimate for  11 PBO and ABO, where would you go?  12 A. I would go to the company's actuary,  13 Watson Wyatt.  14 Q. Any particular person at Watson  15 Wyatt you would contact?  16 A. Not necessarily, no.  17 Q. Is there someone that you routinely  18 communicate with at Watson Wyatt when you have  19 questions about pension matters?  20 A. There are several individuals that I  21 would communicate with.  22 Q. Who are?  23 A. I believe the company's -- the  24 principal that is responsible for Conectiv</p>
<p style="text-align: right;">Page 151</p> <p>1 A. I did not.  2 Q. Let me focus you in, if I could, on  3 Page 50 of 236, using the SEC's URL at the bottom  4 of the page.  5 A. I'm with you.  6 Q. Okay.  7 After discussing the company's view  8 of it's legal position, it goes on to estimate  9 something called ABO and projected benefit  10 obligation.  11 Do you see that?  12 A. I do.  13 Q. What's ABO? Do you know what that  14 means?  15 A. To the best of my knowledge, ABO is  16 accumulated benefit obligation.  17 Q. And then the estimate that they  18 provide for ABO and PBO is \$12 million.  19 Do you see that?  20 A. I do see that, yes.  21 Q. Do you know who calculated that  22 number?  23 A. I do not know directly who  24 calculated that number, no.</p>	<p style="text-align: right;">Page 153</p> <p>1 business -- or, excuse me, PHI business overall.  2 His name is Ray Shaak. Ray, last name is  3 S-h-a-a-k.  4 Q. And where is he based? In Virginia?  5 A. Alexandria, I believe.  6 Q. Anyone else at Watson Wyatt?  7 A. That's who I would go to, but I do  8 not know who prepared these numbers.  9 Q. When did you first learn that these  10 numbers were prepared?  11 A. When I read the 10-Q, in the fall.  12 Q. Did anyone contact your department,  13 to your knowledge, for information to prepare those  14 numbers?  15 A. No.  16 MR. MALONE: You are free to put the  17 10-Q away.  18 (Exhibit P-12 is marked for  19 identification.)  20 BY MR. MALONE:  21 Q. The court reporter has handed you a  22 document marked Plaintiffs-12.  23 Have you seen it before?  24 A. Yes, I have.</p>

39 (Pages 150 to 153)



JAMES R. KREMMELE

<p style="text-align: right;">Page 154</p> <p>1 Q. Is this a declaration that you 2 submitted in connection with this case? 3 A. Yes, it is. 4 Q. And directing your attention to Page 5 7, is that your signature, sir? 6 A. Yes, it is. 7 Q. Okay. 8 Let me direct your attention to Page 9 2 of your declaration, and Paragraph 3. Paragraph 10 3 describes certain features of the ACE plan. 11 Do you see that, sir? 12 A. I see Paragraph 3, yes. 13 Q. There is a reference in Paragraph 3 14 to the ACE plan? 15 A. Yes. 16 Q. What does that ACE plan stand for? 17 A. I believe the reference is to the 18 ACE retirement plan. 19 Q. ACE is an acronym for Atlantic City 20 Electric. 21 A. Oh, excuse me. Atlantic City 22 Electric Company. 23 Q. And, when you use the phrase "ACE 24 plan" here, you are referring to the heritage plan</p>	<p style="text-align: right;">Page 156</p> <p>1 Q. Was there any limit on the amount of 2 lump sum distribution? 3 A. Only as to the terms -- I don't 4 recall whether or not the plan provided a maximum 5 benefit or not, but the terms were -- it was 6 specifically that you had to be over age 55 to 7 receive a lump sum benefit. 8 I don't recall if there was a 9 maximum specified. 10 Q. Let me direct your attention to 11 Paragraph 6 for a second. 12 Do you see that? 13 A. I do. 14 Q. You indicate here that, on April the 15 23rd of 1998, Conectiv's Board of Directors amended 16 the ACE and Delmarva final average pay plans? 17 A. I see that, yes. 18 Q. Could you grab P-2 out of the stack 19 for me -- Plaintiffs-2, which was the minutes we 20 were talking about earlier this morning. If they 21 are in order, it's going to be well down towards 22 the bottom. 23 A. P-2. 24 Q. Okay.</p>
<p style="text-align: right;">Page 155</p> <p>1 that was in place at Atlantic City Electric prior 2 to the adoption of the cash balance sub-plan? 3 A. In part, yes. 4 Q. And any -- what else are you 5 referring to by the phrase "ACE plan"? 6 A. Well, there is an ACE sub-plan that 7 is part of the PHI retirement plan currently. 8 Q. Okay. 9 A. But I believe the reference here is 10 to the Atlantic City Electric Company retirement 11 plan that was the predecessor. 12 Q. Okay. 13 And in Paragraph 3 you highlight 14 certain aspects of that predecessor plan, is that 15 correct? 16 A. Yes, it is. 17 Q. Did that plan have a lump sum 18 distribution option? 19 A. It did have a lump sum distribution 20 option, yes, as part of it. 21 Q. Was lump sum distribution available 22 only to those whose total distributive amount would 23 be under \$5000? 24 A. No.</p>	<p style="text-align: right;">Page 157</p> <p>1 Simple question. Let's see if I can 2 make it work. In your declaration, which is P-12, 3 in Paragraph 6 you reference a meeting of 4 Conectiv's Board of Directors on April the 23rd of 5 1998. 6 Were you referring to the meeting 7 that is summarized in Plaintiffs-2? 8 A. Yes. 9 Q. Let me take you, then, to -- 10 A. We are done with P-2? 11 Q. Yes, I think so. 12 Let me take you to Page 3, Paragraph 13 10 of your declaration. I'd like to focus you on 14 the first sentence, which says, "Conectiv 15 structured the cash balance plan so that, in most 16 cases, the account balance would be identical to 17 the immediate lump sum payment value of the 18 participant's benefits." 19 Do you see that, sir? 20 A. I do. 21 Q. Are there circumstances in which the 22 account balance would not be identical to the 23 immediate lump sum payment value of the 24 participant's benefits?</p>

40 (Pages 154 to 157)



JAMES R. KREMME

<p style="text-align: right;">Page 158</p> <p>1 MS. YU: Objection to the form.  2 THE WITNESS: I can't think of any.  3 I don't believe so.  4 BY MR. MALONE:  5 Q. Let me focus you, then, on Paragraph  6 11. Paragraph 11 states, "Based upon my knowledge,  7 belief, and information provided to me, of the 520  8 participants who have elected a form of benefit  9 under the cash balance plan, 500 -- that is,  10 approximately 96 percent -- have requested to  11 receive a lump sum."  12 First, is that an accurate  13 statement, as you understand it?  14 A. Based on my knowledge, belief and  15 information provided to me, yes.  16 Q. Let's unpack those three things.  17 What's the source your knowledge as  18 referenced in Paragraph 11?  19 A. My legal counsel.  20 Q. What's the source of your belief?  21 A. I have no reason to -- not to  22 believe assertions (sic) of my legal counsel that  23 were provided to me.  24 Q. And what's the source of the</p>	<p style="text-align: right;">Page 160</p> <p>1 to tell me that 520 people had elected a benefit?  2 A. No.  3 Q. Do you know how many of those were  4 65 or older?  5 A. I do not know the demographics of  6 that number, sir.  7 Q. When a participant elects a benefit  8 as part of their departure, are there forms they  9 have to fill out?  10 A. Yes, there are.  11 Q. And those are kept and logged in the  12 human resources department someplace?  13 A. No, they are not.  14 Q. Where are they kept?  15 A. By the Vanguard Group.  16 Q. So that Vanguard would have data and  17 statistics that would verify the accuracy of the  18 information that you've set forth here?  19 A. I would think so, yes, sir.  20 Q. And would Vanguard have the ability  21 to tell me what percentage of them were 65 or older  22 and what percentage of them were not?  23 A. I believe they have that data, yes.  24 Q. Do the forms require the</p>
<p style="text-align: right;">Page 159</p> <p>1 information?  2 A. I don't know what the source of the  3 information was directly.  4 Q. So, the sole basis for the statement  5 in Paragraph 11 is information conveyed to you by  6 counsel, is that correct?  7 MS. YU: Objection to form.  8 THE WITNESS: Correct.  9 BY MR. MALONE:  10 Q. And you did not do anything to  11 independently verify that information?  12 A. I did not.  13 Q. Okay.  14 A. I had no reason to disbelieve it.  15 Q. Of the 520 -- first of all, do you  16 know that there were 520 participants that have  17 elected a form of benefit under the cash balance  18 plan?  19 A. To the extent of information that  20 was provided to me.  21 Q. Before you had whatever  22 conversations you had with counsel as part of  23 preparing this declaration, if I could have taken  24 your deposition that day, would you have been able</p>	<p style="text-align: right;">Page 161</p> <p>1 participants to submit their date of birth with  2 their election forms?  3 A. To the best of my knowledge, the  4 date of birth of the individual is already on the  5 election form. That's information that Vanguard  6 has as part of their management of the plan.  7 Q. Let me ask you to turn to Paragraph  8 14. In the second sentence you indicate that  9 "Conectiv increased the employer matching  10 contributions in its 401(k) plan."  11 Do you see that, sir?  12 A. Yes, I do.  13 Q. Can you describe how the new  14 Conectiv 401(k) plan match structure differed from  15 its predecessor plans?  16 A. Not off of the top of my head, no.  17 I would have to refer to either information you've  18 provided or other historical information.  19 Q. Were you a participant in the  20 Delmarva 401(k) plan?  21 A. Yes, sir.  22 Q. Did you have a match?  23 A. Yes, sir.  24 Q. Was the match in cash or in stock?</p>

41 (Pages 158 to 161)

JAMES R. KREMME

<p style="text-align: right;">Page 162</p> <p>1 A. In stock.</p> <p>2 Q. Do you remember anything about the</p> <p>3 match formula?</p> <p>4 A. In what time period, sir?</p> <p>5 Q. Right before Conectiv was formed.</p> <p>6 Say, in or about 1998, do you remember what the</p> <p>7 match structure was under the Delmarva 401(k) plan?</p> <p>8 A. I remember there was a match. I do</p> <p>9 not recall the specific number of the match prior</p> <p>10 to. I know that it was higher after -- after the</p> <p>11 implementation of the change.</p> <p>12 Q. Now let me take you to Paragraph 15.</p> <p>13 In the first sentence you indicate that "Conectiv</p> <p>14 also took steps to protect the expectations of</p> <p>15 long-term employees close to retirement."</p> <p>16 Do you see that, sir?</p> <p>17 A. Yes, I do.</p> <p>18 Q. Why did they do that?</p> <p>19 A. I think it was part of the strategy</p> <p>20 to take into consideration and -- long service of</p> <p>21 employees and those who might be close to</p> <p>22 retirement when we would make a change. That there</p> <p>23 was, you know, some consideration of that time</p> <p>24 period and some expectations that they might have</p>	<p style="text-align: right;">Page 164</p> <p>1 MS. YU: Objection to form.</p> <p>2 THE WITNESS: I don't believe so,</p> <p>3 no.</p> <p>4 BY MR. MALONE:</p> <p>5 Q. What role did you have in</p> <p>6 determining the structure of grandfather benefits</p> <p>7 under the cash balance sub-plan?</p> <p>8 A. I had input as part of the project</p> <p>9 team.</p> <p>10 Q. Who had the most input?</p> <p>11 A. To my recollection, it was Don Cain,</p> <p>12 who was vice-president of human resources at the</p> <p>13 time.</p> <p>14 Q. Could you turn to Page 6 of your</p> <p>15 declaration, which is Plaintiffs-12. Let me direct</p> <p>16 your attention to Paragraph 18.</p> <p>17 A. Okay.</p> <p>18 Q. The first sentence indicates, "There</p> <p>19 are at least 90 members of the putative class who</p> <p>20 have executed releases with defendants for any</p> <p>21 ERISA claim (except for claims for accrued and</p> <p>22 vested benefits as set forth in the plan documents)</p> <p>23 in exchange for severance payments."</p> <p>24 Do you see that, sir?</p>
<p style="text-align: right;">Page 163</p> <p>1 created -- or might have been created by the</p> <p>2 company prior to that.</p> <p>3 Q. Did you perceive the possibility to</p> <p>4 exist that some employees could be worse off under</p> <p>5 the new plan formula than under the old?</p> <p>6 MS. YU: Objection to the form.</p> <p>7 THE WITNESS: Did I, personally?</p> <p>8 BY MR. MALONE:</p> <p>9 Q. Yes.</p> <p>10 A. Could you restate the question?</p> <p>11 Q. Sure.</p> <p>12 Let me try to go at it this way. To</p> <p>13 your understanding, was one of the reasons</p> <p>14 grandfathering was put in place for certain</p> <p>15 categories of employees a concern that the benefits</p> <p>16 they might earn under the new cash balance formula</p> <p>17 would not be as great as what they would have</p> <p>18 earned under their heritage plans?</p> <p>19 MS. YU: Objection to the form.</p> <p>20 THE WITNESS: I don't know how to</p> <p>21 answer. I don't believe that was the prime</p> <p>22 consideration, no.</p> <p>23 BY MR. MALONE:</p> <p>24 Q. Was it a consideration?</p>	<p style="text-align: right;">Page 165</p> <p>1 A. I do see that.</p> <p>2 Q. What was the basis on which you made</p> <p>3 that statement?</p> <p>4 A. Information provided to me by</p> <p>5 counsel.</p> <p>6 Q. So, you didn't review the releases</p> <p>7 personally?</p> <p>8 A. I did not.</p> <p>9 Q. You would not be able to identify</p> <p>10 the 90 employees involved?</p> <p>11 A. I would not, personally, no.</p> <p>12 Q. Do you know over what period of time</p> <p>13 those releases were executed?</p> <p>14 A. I do not.</p> <p>15 Q. Would you be able to tell me, of the</p> <p>16 90, how many were executed after the litigation was</p> <p>17 filed and how many were executed before?</p> <p>18 A. I could not, no.</p> <p>19 Q. Where would you go for that</p> <p>20 information?</p> <p>21 A. To my legal counsel.</p> <p>22 Q. Anyplace internally?</p> <p>23 A. My internal legal counsel.</p> <p>24 (The following portion of this</p>

42 (Pages 162 to 165)

JAMES R. KREMME

<p style="text-align: right;">Page 166</p> <p>1 transcript has been designated confidential.)</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 168</p> <p>1 forth in the table?</p> <p>2 A. I did not.</p> <p>3 Q. When were you first contacted and</p> <p>4 requested to provide a declaration in connection</p> <p>5 with this case?</p> <p>6 A. I don't recall the exact date, sir.</p> <p>7 Q. Was it this year or last year?</p> <p>8 A. I believe it was since the beginning</p> <p>9 of the year, sir, 2007.</p> <p>10 Q. To the best of your recollection,</p> <p>11 approximately how long before the time you signed</p> <p>12 the declaration were you contacted requesting you</p> <p>13 to provide a declaration?</p> <p>14 A. I don't recall the exact time frame.</p> <p>15 Q. Was it a week, a month, a day?</p> <p>16 A. I don't recall the exact time frame.</p> <p>17 Q. Did you receive a draft in advance?</p> <p>18 A. I did receive a draft.</p> <p>19 Q. And did you make any comments or</p> <p>20 corrections on the draft, without revealing what</p> <p>21 the substance of them may be?</p> <p>22 A. I don't recall making any changes,</p> <p>23 no.</p> <p>24 MR. MALONE: Let's take a break.</p>
<p style="text-align: right;">Page 167</p> <p>1 Q. Let's turn to Page 7 of your</p> <p>2 declaration, and Page 7 contains some personal</p> <p>3 financial data, so we will be treating this</p> <p>4 discussion as confidential under the Protective</p> <p>5 Order.</p> <p>6 Do you see a table there?</p> <p>7 A. Yes, I do.</p> <p>8 Q. Did you prepare the table?</p> <p>9 A. I did not.</p> <p>10 Q. Now, the table has columns in it</p> <p>11 which reflect accrued benefits.</p> <p>12 Do you see that?</p> <p>13 A. I do see that.</p> <p>14 Q. And there is a number for each</p> <p>15 plaintiff, correct?</p> <p>16 A. I do see that, yes.</p> <p>17 Q. Did you calculate the numbers?</p> <p>18 A. I did not.</p> <p>19 Q. Do you know who calculated the</p> <p>20 numbers?</p> <p>21 A. I don't know specifically who</p> <p>22 calculated them, no. I don't know the individual.</p> <p>23 Q. Did you do anything to independently</p> <p>24 verify the accuracy of the numbers that are set</p>	<p style="text-align: right;">Page 169</p> <p>1 (End of confidential portion of</p> <p>2 transcript.)</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

43 (Pages 166 to 169)

JAMES R. KREMME

<p style="text-align: right;">Page 170</p> <p>1 (Recess called at 3:45 p.m.)  2 (Resumed at 3:57 p.m.)  3 BY MR. MALONE:  4 Q. Anything you need to correct in your  5 testimony?  6 A. Yes.  7 Q. What's that?  8 A. In my role as corporate designee,  9 I'd like to clarify a couple points, if I could.  10 Referring back to P-11 --  11 Q. The 10-Q?  12 A. -- the 10-Q -- help me find the page  13 again.  14 Q. Would be 49 and 50 of 236, using the  15 little parentheticals.  16 A. Okay.  17 On Page 50 of 236, I'd like to  18 address the information regarding the ABO and PBO  19 obligation that is presented in the 10-Q.  20 Q. Sure.  21 A. It is my information, relayed to me  22 by counsel, that the \$12 million number was a  23 number provided by Watson Wyatt, the company's  24 plan's actuary, was related to me by legal counsel.</p>	<p style="text-align: right;">Page 172</p> <p>1 for that, other than what you were told by your  2 counsel?  3 A. Other than what I was relayed by my  4 legal counsel, no, sir.  5 Q. Anything else that you need to  6 correct or amplify?  7 A. That's all I have, thank you.  8 MR. MALONE: Let's mark 13.  9 (Exhibits P-13 and P-14 are marked  10 for identification.)  11 BY MR. MALONE:  12 Q. Take a look at Plaintiffs-13 first.  13 A. Okay.  14 Q. Can you tell me what it is?  15 A. It appears to me to be the Atlantic  16 City Electric Company Retirement Plan plan  17 document.  18 Q. To your knowledge, is this the plan  19 document that was in place immediately preceding  20 the time when the Conectiv cash balance sub-plan  21 was adopted?  22 A. I believe it is, yes, sir.  23 Q. Let me take you to Plaintiffs-14.  24 A. Okay.</p>
<p style="text-align: right;">Page 171</p> <p>1 Q. Anything else on that subject?  2 A. I don't believe so, no.  3 Q. Anything else you need to correct or  4 amplify?  5 A. One other point. As part of P-12,  6 on Page 7, the table at the top of Page 7 --  7 Q. Yes.  8 A. -- that we discussed relating to  9 accrued benefits, under the previous Atlantic City  10 Electric and Delmarva plans versus accrued benefits  11 under the cash balance plan --  12 Q. Yes.  13 A. -- that the basis for this  14 information was data provided by The Vanguard Group  15 to my legal counsel.  16 Q. Is it your understanding that  17 Vanguard calculated the accrued benefits figure for  18 the cash balance plan?  19 A. That's my understanding, yes, sir.  20 Q. And is it your understanding that  21 Vanguard calculated the applicable ACE or Delmarva  22 plan accrued benefits?  23 A. That's my understanding, yes, sir.  24 Q. Do you have any independent basis</p>	<p style="text-align: right;">Page 173</p> <p>1 Q. First, we've got a bunch of  2 signatures on the front -- face page of  3 Plaintiffs-14.  4 A. Okay.  5 Q. Is that Mr. Cain's signature?  6 A. To the best of my recollection, yes.  7 Q. And beneath that Moira K. Donoghue  8 is listed. Are you familiar with her signature?  9 A. I am, yes.  10 Q. Is that her signature appearing  11 beneath Mr. Cain's?  12 A. I believe, to the best of my  13 knowledge, it is, yes.  14 Q. And Alan Beattie is listed below Ms.  15 Donoghue, is that correct?  16 A. Yes, he is.  17 Q. And are you familiar with his  18 signature?  19 A. Yes, I am.  20 Q. And is that his signature that  21 appears below Ms. Donoghue's?  22 A. To the best of my knowledge, yes.  23 Q. The last person listed in the middle  24 of the page is Donald P. Connelly. Do you see</p>

44 (Pages 170 to 173)

JAMES R. KREMMELE

Page 174	Page 176
<p>1 that, sir?</p> <p>2 A. I do.</p> <p>3 Q. Do you know Mr. Connelly?</p> <p>4 A. I did know him, yes.</p> <p>5 Q. Are you familiar with his signature?</p> <p>6 A. Yes, I am.</p> <p>7 Q. And is that his signature that</p> <p>8 appears there?</p> <p>9 A. To the best of my recollection, yes.</p> <p>10 Q. And it also appears a second time as</p> <p>11 secretary?</p> <p>12 A. Yes.</p> <p>13 Q. Can you tell me what P-14 is?</p> <p>14 A. To the best of my knowledge, it is</p> <p>15 the Delmarva Power &amp; Light Company Retirement</p> <p>16 Plan plan document.</p> <p>17 Q. To the best of your knowledge, is</p> <p>18 this the plan document that was controlling</p> <p>19 immediately preceding the time when the Conectiv</p> <p>20 cash balance sub-plan became effective?</p> <p>21 A. Yes.</p> <p>22 Q. I think you had said Mr. Cain left</p> <p>23 the company in 2002?</p> <p>24 A. To the best of my recollection, yes.</p>	<p>1 A. I do not.</p> <p>2 Q. Do you know anything about the</p> <p>3 circumstances that led him to leave?</p> <p>4 A. I do not.</p> <p>5 Q. Do you know whether he was fired?</p> <p>6 A. I do not.</p> <p>7 Q. When was the last time you spoke</p> <p>8 with Mr. Wilkinson?</p> <p>9 A. I don't recall the last time I spoke</p> <p>10 to Mr. Wilkinson.</p> <p>11 Q. Have you spoke to him since he left</p> <p>12 the company?</p> <p>13 A. I have not.</p> <p>14 MR. MALONE: That's all I have for</p> <p>15 you right now, subject to whatever examination your</p> <p>16 counsel may have.</p> <p>17 MS. YU: I just have a couple of</p> <p>18 questions.</p> <p>19 MR. MALONE: Sure.</p> <p>20 EXAMINATION</p> <p>21 BY MS. YU:</p> <p>22 Q. If you could take a look at Exhibit</p> <p>23 D-5.</p> <p>24 A. Okay.</p>
Page 175	Page 177
<p>1 Q. Did he retire?</p> <p>2 A. He did.</p> <p>3 Q. Had he reached normal retirement</p> <p>4 age?</p> <p>5 A. Not to my recollection.</p> <p>6 Q. Did he take another position after</p> <p>7 he left, to your knowledge?</p> <p>8 A. With Pepco Holdings?</p> <p>9 Q. With any other company.</p> <p>10 A. I'd have no idea what Don has done.</p> <p>11 Q. Have you spoken with him since he</p> <p>12 left?</p> <p>13 A. I have.</p> <p>14 Q. When was the last time you chatted</p> <p>15 with him?</p> <p>16 A. I would guess about -- that phrase,</p> <p>17 I'm sorry. Approximately nine months ago.</p> <p>18 Q. What was the context?</p> <p>19 A. We had breakfast.</p> <p>20 Q. Did you discuss the litigation in</p> <p>21 any way?</p> <p>22 A. Did not.</p> <p>23 Q. Ben Wilkinson, do you know when he</p> <p>24 left the company?</p>	<p>1 Q. And, while we are looking for</p> <p>2 exhibits, and P-2.</p> <p>3 A. Okay.</p> <p>4 Q. Mr. Kremmel, you had indicated in</p> <p>5 your earlier testimony that you understood that the</p> <p>6 timing of the distribution of D-5, which was the</p> <p>7 third Facts Newsletter, was in April or May of</p> <p>8 1998.</p> <p>9 A. That's correct.</p> <p>10 Q. So -- and then we also have P-2,</p> <p>11 which are the minutes of the Personnel and</p> <p>12 Compensation Committee, dated April 23, 1998.</p> <p>13 Did the third Facts Newsletter go</p> <p>14 out before or after the meeting on April 23, 1998?</p> <p>15 A. To the best of my recollection, the</p> <p>16 third Facts Newsletter would have gone out after</p> <p>17 the meeting on April 23rd of '98 of the Board of</p> <p>18 Directors.</p> <p>19 Q. Would you take a look back at the</p> <p>20 10-Q.</p> <p>21 A. Okay.</p> <p>22 Q. Now, I understand that you were not</p> <p>23 personally involved in drafting the description of</p> <p>24 the cash balance plan litigation that's contained</p>

45 (Pages 174 to 177)



JAMES R. KREMMELE

<p style="text-align: right;">Page 178</p> <p>1 in the 10-Q, correct?</p> <p>2 A. That's correct.</p> <p>3 Q. In your designation as the</p> <p>4 representative for the company in this deposition,</p> <p>5 do you have a general understanding of what the</p> <p>6 approximation of \$12 million that's referred to in</p> <p>7 the description is?</p> <p>8 A. To my understanding, that number was</p> <p>9 provided by the company's actuaries and it</p> <p>10 represents a liability number associated with</p> <p>11 re-establishing retroactively benefits under the</p> <p>12 Delmarva Power retirement -- the previous Delmarva</p> <p>13 Power retirement plan and the Atlantic City</p> <p>14 Electric retirement plan and freezing the benefits</p> <p>15 under the cash balance plan.</p> <p>16 Q. Mr. Kremmel, are you a participant</p> <p>17 in the cash balance plan?</p> <p>18 A. I am, yes.</p> <p>19 Q. How long have you been a</p> <p>20 participant?</p> <p>21 A. Since January 1st, 1999.</p> <p>22 Q. Have you been participating</p> <p>23 continuously in the cash balance plan since then?</p> <p>24 A. No.</p>	<p style="text-align: right;">Page 180</p> <p>1 matters relating to the cash balance plan in the</p> <p>2 period late 1998 and 1999? Can you give me some</p> <p>3 sense of an estimate?</p> <p>4 A. I do not recall at this point how</p> <p>5 many hours I might have spent specifically on the</p> <p>6 cash balance plan.</p> <p>7 Q. Was it a significant undertaking</p> <p>8 that took a lot of your attention?</p> <p>9 A. It was one of several undertakings</p> <p>10 that took my attention during that period of time.</p> <p>11 Q. And you worked intensively on it?</p> <p>12 A. On? On the cash balance plan?</p> <p>13 Q. Cash balance plan, yes.</p> <p>14 A. To the extent that I was on the</p> <p>15 Total Rewards project team, yes.</p> <p>16 Q. And did you consider your service on</p> <p>17 the Total Rewards project team to be a significant</p> <p>18 achievement?</p> <p>19 A. I think I contributed adequately, as</p> <p>20 any of the other team members did.</p> <p>21 Q. Was it significant to you that there</p> <p>22 were no initial lawsuits surrounding the roll-out</p> <p>23 of the cash balance plan?</p> <p>24 A. No, sir.</p>
<p style="text-align: right;">Page 179</p> <p>1 Q. And have you ever taken a</p> <p>2 distribution from the cash balance plan?</p> <p>3 A. I have, yes.</p> <p>4 Q. Can you describe the circumstances</p> <p>5 under which you took a distribution?</p> <p>6 A. I left Pepco Holdings from -- for</p> <p>7 one year, in late 2004, early 2005, to accept a</p> <p>8 position as manager of compensation and benefits</p> <p>9 with American Water for that short period of time.</p> <p>10 Q. From your own personal perspective,</p> <p>11 again, not as the corporate designee, but from your</p> <p>12 own perspective as a participant in the cash</p> <p>13 balance plan, do you have a sense of whether you</p> <p>14 were harmed or benefited by the adoption of the</p> <p>15 cash balance plan as opposed to the prior plan that</p> <p>16 was in place?</p> <p>17 MR. MALONE: Object as to form.</p> <p>18 THE WITNESS: My -- my personal</p> <p>19 opinion is that myself and my family have been</p> <p>20 benefited by the -- by the cash balance plan.</p> <p>21 MS. YU: That's all I have.</p> <p>22 FURTHER EXAMINATION</p> <p>23 BY MR. MALONE:</p> <p>24 Q. How much of your time was spent on</p>	<p style="text-align: right;">Page 181</p> <p>1 Q. No?</p> <p>2 Have you ever indicated to someone</p> <p>3 that one of your professional qualifications was</p> <p>4 that you assisted in this transition and there were</p> <p>5 no lawsuits?</p> <p>6 A. I don't recall ever making that</p> <p>7 assertion, no.</p> <p>8 Q. What's Zerodegrees?</p> <p>9 A. Zerodegrees in what context, sir?</p> <p>10 Q. Zerodegrees.com.</p> <p>11 A. I have no idea.</p> <p>12 Q. Did you ever post your resume on the</p> <p>13 Internet?</p> <p>14 A. I have, yes.</p> <p>15 MR. MALONE: Let's mark that as</p> <p>16 Plaintiffs-15.</p> <p>17 (Exhibit P-15 is marked for</p> <p>18 identification.)</p> <p>19 BY MR. MALONE:</p> <p>20 Q. Take a look at the first paragraph</p> <p>21 at the bottom of the page on Plaintiffs-15. It</p> <p>22 says, "Objective: A management position in</p> <p>23 compensation, executive compensation, benefits,</p> <p>24 compensation and benefits or human resources."</p>

46 (Pages 178 to 181)



JAMES R. KREMMELE

Page 182	Page 184
<p>1 Did you ever post your resume on the 2 Internet that said that was your objective? 3 A. I have no reason not to think that I 4 did. 5 Q. And, if you'll turn the page, under 6 the heading of "Experience," the first listing 7 says, "Manager compensation and executive 8 compensation, August, 2002 to present, Pepco 9 Holdings, Inc., Wilmington, Delaware. 10 Do you see that, sir? 11 A. At the top of the page? 12 Q. Yes. Top of Page 2, right after the 13 all caps "Experience." 14 A. Got it. 15 Q. Was that accurate as of 2005? 16 A. To the best of my recollection, yes. 17 Q. And further down it indicates that, 18 from 2001 to 2002, you served as compensation 19 manager at Conectiv. Is that correct? 20 A. Yes. 21 Q. And further down it indicates that, 22 from 1999 to 2001, you served as benefits manager 23 at Conectiv, is that correct? 24 A. To the best of my recollection, yes.</p>	<p>1 Q. Then it continues and says, 2 "Restaffed benefits team due to poor performance." 3 Did you write that? 4 A. I have no reason to believe that I 5 didn't. 6 Q. What did you mean when you said 7 "Restaffed benefits team due to poor performance"? 8 A. That we retained new individuals in 9 the company. 10 Q. And were certain individuals let go? 11 A. Certain individuals left the 12 company. 13 Q. Who left? 14 A. Alan Beattie. 15 Q. Anyone else? 16 A. Not to my knowledge. 17 Q. Was Mr. Beattie's departure due to 18 dissatisfaction with his performance? 19 A. No. 20 Q. Who was added to the benefits team? 21 A. As I recall, the individual that we 22 hired was Kathy Snyder. 23 Q. And what position did she assume? 24 A. A benefits analyst position.</p>
Page 183	Page 185
<p>1 Q. Is this something that you 2 personally posted on the Internet, Plaintiffs-15? 3 A. I have no reason to believe I 4 didn't. 5 Q. Let me direct your attention to the 6 third page. Roughly a third of the way down the 7 page it indicates that you were a senior employee 8 relations consultant from 1998 to 1999 at Conectiv. 9 Do you see that, sir? 10 A. I do. 11 Q. Is that a true statement? 12 A. To the best of my recollection, yes. 13 Q. And then it says, "Assumed 14 supervision of the Conectiv benefits team in 1999. 15 Implemented a flexible benefits program, new 401(k) 16 programs and administrators, and the transition 17 from a traditional defined benefits pension plan to 18 a cash balance pension plan. Managed the 19 outsourcing of pension administration. Transitions 20 were made without any individual or class action 21 lawsuits." 22 Did you write that? 23 A. I have no reason to think that I 24 didn't.</p>	<p>1 Q. What were the duties of benefits 2 analyst? 3 A. Administration of the company's 4 benefits plans. 5 Q. When were you rehired by Pepco 6 Holdings? 7 A. In June of 2005. 8 Q. And in what context? 9 A. I'm not sure I understand your 10 question. 11 Q. What led you to come back? 12 A. I was asked to come back. 13 Q. And why were you asked to come back? 14 A. To be able to provide services -- 15 professional services to the company. 16 Q. Were you dissatisfied with your 17 existing position at that time? 18 A. My existing position at American 19 Water? 20 Q. Yes. 21 A. Not necessarily, no. 22 Q. Why did you leave Conectiv 23 initially? 24 A. To accept a promotion with American</p>

47 (Pages 182 to 185)

JAMES R. KREMMELE

<p>Page 186</p> <p>1 Water.</p> <p>2 MR. MALONE: I'm done.</p> <p>3 THE WITNESS: Okay.</p> <p>4 MS. YU: I have nothing.</p> <p>5 (4:18 p.m.)</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>Page 188</p> <p>1 JURAT</p> <p>2 I, JAMES R. KREMMELE, do hereby</p> <p>3 certify that I have read the foregoing transcript</p> <p>4 of my testimony taken on Tuesday, March 13, 2007,</p> <p>5 and have signed it subject to the following</p> <p>6 changes:</p> <p>7 PAGE LINE CORRECTION</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p>Page 187</p> <p>1 CERTIFICATE</p> <p>2 I, Sean M. Fallon, a Registered</p> <p>3 Professional Reporter and Notary Public of the</p> <p>4 Commonwealth of Pennsylvania, do hereby certify</p> <p>5 that, prior to the commencement of the examination,</p> <p>6 the witness and/or witnesses were sworn by me to</p> <p>7 testify to the truth and nothing but the truth.</p> <p>8 I do further certify that the</p> <p>9 foregoing is a true and accurate computer-aided</p> <p>10 transcript of the testimony as taken</p> <p>11 stenographically by and before me at the time,</p> <p>12 place and on the date hereinbefore set forth.</p> <p>13 I do further certify that I am</p> <p>14 neither of counsel nor attorney for any party in</p> <p>15 this action and that I am not interested in the</p> <p>16 event nor outcome of this litigation.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

48 (Pages 186 to 188)



# **CONFIDENTIAL**

**In the Matter Of:**

**Charles, et al.**

**v.**

**Pepco Holdings, Inc., et al.**

**C.A. # 05-702**

---

**Transcript of:**  
**Thomas S. Troup**

**January 12, 2007**

---

Wilcox & Fetzer, Ltd.  
Phone: 302-655-0477  
Fax: 302-655-0497  
Email: lhertzog@wilfet.com  
Internet: www.wilfet.com

CONFIDENTIAL  
Thomas S. Troup

Charles, et al.

v.  
C.A. # 05-702

Pepco Holdings, Inc., et al.  
January 12, 2007

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

J. MICHAEL CHARLES; MAURICE W. WARD, )  
JR.; and JOSEPH I. FINK, JR., on )  
behalf of themselves and all others )  
similarly situated, )  
 )  
Plaintiffs, )  
 ) Civil Action  
v. ) No. 05-702  
 )  
PEPCO HOLDINGS, INC., CONECTIV, and )  
PEPCO HOLDINGS RETIREMENT PLAN, ) PAGE 43 IS  
 ) CONFIDENTIAL  
Defendants. )

Deposition of THOMAS S. TROUP taken  
pursuant to notice at the law offices of Pepper  
Hamilton LLP, 1313 Market Street, Hercules Plaza,  
Fifth Floor, Wilmington, Delaware, beginning at  
9:35 a.m. on Friday, January 12, 2007, before Kathleen  
White Palmer, Registered Merit Reporter and Notary  
Public.

APPEARANCES:

JOSEPH G. SAUDER, ESQUIRE  
CHIMICLES & TIKELLIS LLP  
One Haverford Centre  
Haverford, Pennsylvania 19041  
for the Plaintiffs  
KAY KYUNGSUN YU, ESQUIRE  
PEPPER HAMILTON LLP  
3000 Two Logan Square  
Philadelphia, Pennsylvania 19103-2799  
for the Defendants

-----  
WILCOX & FETZER  
1330 King Street - Wilmington, Delaware 19801  
(302) 655-0477  
www.wilfet.com

CONFIDENTIAL  
Thomas S. Troup

Charles, et al.

v.  
C.A. # 05-702

Pepco Holdings, Inc., et al.  
January 12, 2007

Page 2

Page 4

1 THOMAS S. TROUP,  
2 the witness herein, having first been  
3 duly sworn on oath, was examined and  
4 testified as follows:  
5 BY MS. YU:  
6 Q. Good morning, Mr. Troup.  
7 A. Good morning.  
8 MR. SAUDER: Just before we get started, we  
9 are going to read and sign.  
10 BY MS. YU:  
11 Q. Could you please state your name for the  
12 record?  
13 A. Thomas S. Troup.  
14 Q. Thank you, Mr. Troup.  
15 My name is Kay Yu and I represent the  
16 defendants in the litigation that you have brought  
17 against Pepco Holdings, Conectiv, and the Pepco  
18 Retirement Plan. Mr. Troup, I just wanted to get some  
19 preliminary matters out of the way.  
20 Have you ever been deposed before?  
21 A. Yes.  
22 Q. In what context?  
23 A. As -- there was a bodily injury lawsuit against  
24 Pepco -- let me back up.

1 Q. Also, as you just did, you need to verbalize  
2 all of your answers.  
3 A. I'll try to remember that. I'm good at  
4 nodding.  
5 Q. So am I.  
6 Mr. Troup, is there any reason that you  
7 cannot provide truthful testimony today?  
8 A. No.  
9 Q. Are you on any medication?  
10 A. I have -- take Crestor for cholesterol  
11 medicine, but that's all.  
12 Q. Do you have any criminal convictions or  
13 arrests?  
14 A. No.  
15 Q. Could you tell me a little bit about your  
16 educational background?  
17 A. I have a college degree from Bloomsburg  
18 University in business. That's my, you know,  
19 educational background.  
20 Q. What year did you graduate?  
21 A. 1970 I graduated.  
22 Q. What year did you graduate high school?  
23 A. 1966.  
24 Q. Which high school did you attend?

Page 3

Page 5

1 It was a subrogation claim, and in my  
2 position as the insurance manager for Conectiv at the  
3 time, there was some questions with respect to the  
4 workmen's compensation benefits and general liability  
5 and insurance benefits associated with the bodily  
6 injury claim.  
7 Q. Who brought that claim?  
8 A. A construction worker at our Indian River power  
9 plant.  
10 Q. Do you recall the name of the worker?  
11 A. No, I don't. I'll probably think of it, but I  
12 can't think of it at the moment.  
13 Q. Have you been deposed more than once?  
14 A. No. That's all.  
15 Q. Have you ever been a party to a litigation  
16 other than this one?  
17 A. No.  
18 Q. During the course of the question and answers  
19 today, I just want to make sure we give each other a  
20 chance to finish both the answer and the question  
21 before we start up. The court reporter needs to take  
22 down everything that everybody says, and it makes it a  
23 lot easier for everyone if we can try to do that.  
24 A. Fine.

1 A. Shikellamy High School, S-h-i-k-e-l-l-a-m-y.  
2 Q. Did you graduate college with a degree?  
3 A. Yes.  
4 Q. What was that degree?  
5 A. Business.  
6 Q. Do you have any other degrees?  
7 A. I have a CPCU, chartered property and casualty  
8 underwriter, an insurance designation.  
9 Q. When did you obtain that designation?  
10 A. I think it was 1994.  
11 Q. Who is your current employer?  
12 A. Pepco Holdings, Inc.  
13 Q. Can we refer to Pepco Holdings, Inc., as PHI?  
14 A. That's fine.  
15 Q. How long have you been working for PHI?  
16 A. Twenty-seven years.  
17 MR. SAUDER: Just to clarify, are we  
18 referring to PHI as just PHI, just Pepco or Delmarva?  
19 If we can just clarify that.  
20 THE WITNESS: PHI and all predecessor  
21 companies.  
22 MR. SAUDER: Okay.  
23 BY MS. YU:  
24 Q. Thank you.

2 (Pages 2 to 5)

302-655-0477

CONFIDENTIAL Charles, et al.  
Thomas S. Troup

v.  
C.A. # 05-702

Pepco Holdings, Inc., et al.  
January 12, 2007

Page 6

1 To the best of your knowledge, can you give  
2 me a history of the predecessor companies?  
3 **A. It started out as Delmarva Power. In the late**  
4 **'90s we merged with Atlantic City, became Conectiv.**  
5 **Conectiv was then purchased by Pepco in 2002 to form**  
6 **Pepco Holdings.**  
7 Q. Do you recall what year you started working for  
8 Delmarva Power?  
9 **A. 1979, October the 15th.**  
10 Q. What was your job at that time?  
11 **A. Insurance analyst.**  
12 Q. Briefly, what did you do between 1970 and 1979  
13 in terms of your job?  
14 **A. I worked for several other companies, either in**  
15 **accounting or insurance.**  
16 Q. Have your job duties changed?  
17 **A. Yes.**  
18 MR. SAUDER: Objection. Just with regard  
19 to -- can you just clarify that?  
20 MS. YU: Sure.  
21 BY MS. YU:  
22 Q. Have your job duties changed since you started  
23 working for Delmarva in 1979?  
24 **A. Yes.**

Page 7

1 Q. Can you give me a general history of the  
2 varying positions and when there were major changes in  
3 your job duties?  
4 **A. From 1979 until 2006 I was in the insurance**  
5 **department, essentially the same job duties and**  
6 **responsibilities. 2006 I'm now in the claims**  
7 **department.**  
8 Q. What are your current duties?  
9 **A. I deal with liability claims against the**  
10 **company brought by customers.**  
11 Q. Can you give me an example of the type of  
12 claim?  
13 **A. We seal someone's electric and air. The food**  
14 **is damaged in the refrigerator. It's my job to**  
15 **negotiate a settlement with them. The majority of it**  
16 **is property damage.**  
17 Q. Are you currently the member of a union?  
18 **A. No.**  
19 Q. Have you ever been a member of a union?  
20 **A. No.**  
21 Q. Other than this lawsuit, have you ever filed  
22 any complaints or charges against your employer?  
23 **A. No.**  
24 Q. Prior to January 1st of 1999, what's your

Page 8

1 understanding of how your pension benefits worked?  
2 **A. Prior to January 1st, 1999, I would have a**  
3 **defined benefit plan, pension plan.**  
4 Q. Do you have an understanding of how your  
5 benefits would have been calculated under that defined  
6 benefit plan?  
7 **A. Yes.**  
8 Q. Could you tell me what your understanding is?  
9 **A. Have to do with the -- I believe it's the last**  
10 **five years of my salary, and then there were certain**  
11 **factors applied to that along with my years of service**  
12 **to determine an amount.**  
13 Q. Did that benefit or the pension plan change at  
14 some point?  
15 **A. For me?**  
16 Q. Yes.  
17 **A. January 1st, 1999, it changed.**  
18 Q. What's your understanding of how it changed at  
19 that time?  
20 **A. It became a cash balance pension plan.**  
21 Q. What is your understanding of how a cash  
22 balance plan works?  
23 **A. The cash balance pension plan was that the**  
24 **company gave us a -- determined a starting balance for**

Page 9

1 **each of the employees, and then going forward there**  
2 **would be monies put into the plan for each employee.**  
3 **You know, some percentage of their -- of salary. And**  
4 **for me, because I was -- I would also have been, you**  
5 **know, able to get certain transition credits applied**  
6 **to that.**  
7 Q. What's your understanding of how you became  
8 eligible to receive transition credits?  
9 **A. It was based upon my age, the number of years**  
10 **of service I had with the company.**  
11 Q. Is it fair to say that the transition credits  
12 were larger for people who had more service and who  
13 were older?  
14 **A. Yes. They were graduated up based on age and**  
15 **years of service.**  
16 Q. With respect to the pay credits, what's your  
17 understanding of what percentage an individual  
18 participant gets in terms of pay credits?  
19 **A. I guess I don't understand what you mean by**  
20 **"pay credits."**  
21 Q. Is it your understanding that pay credits are  
22 provided under the cash balance plan?  
23 **A. There's a percentage applied against my salary**  
24 **to increase the, you know -- that would come out to**

3 (Pages 6 to 9)



CONFIDENTIAL  
Thomas S. Troup

Charles, et al.

v.  
C.A. # 05-702

Pepco Holdings, Inc., et al.  
January 12, 2007

Page 12

Page 10

1 be, you know, added to my, you know, previous balance,  
2 yes. Is that what you mean by "pay credits"?  
3 Q. Yes.  
4 A. Okay. There's pay credits and then transition  
5 credits.  
6 Q. Are there also interest credits?  
7 A. Well, I take the interest credits. I'm  
8 thinking they're part of the -- part of the transition  
9 credits.  
10 Q. When did you first learn that the pension plan  
11 was going to be changed to a cash balance formula?  
12 A. I believe it was sometime in the early part of  
13 1998, you know, the company was coming out with  
14 literature introducing, you know, the new pension  
15 plan, the cash balance plan.  
16 Q. What is your current job title?  
17 A. Senior claims representative.  
18 Q. From 1979 to 2006, did you have different job  
19 titles?  
20 A. Yeah, yeah. But they were all within, you  
21 know, the realm of doing insurance.  
22 Q. What was your last job title in the insurance  
23 department?  
24 A. Insurance coordinator.

1 A. Okay.  
2 Q. And then the answer says: "The design of the  
3 plan is not yet finalized, but we know it will be  
4 what's called a cash balance plan."  
5 Exhibit D-2 is dated October 20th, 1997.  
6 Is this information consistent with what you recall  
7 you were provided by your employer regarding the new  
8 pension plan?  
9 MR. SAUDER: Objection to form.  
10 You can answer if you understand the  
11 question.  
12 A. Would you repeat it, please?  
13 Q. Sure.  
14 You indicated previously that sometime in  
15 1998 the company had announced that there was going to  
16 be a change in the pension plan. Exhibit D-2 is dated  
17 October 20th, 1997, and includes information regarding  
18 what's called a cash balance plan. Is this the kind  
19 of information that you recall receiving?  
20 A. Yeah. You know, I used the date 1999 because,  
21 you know, that's around the time -- you know, I was  
22 not pinpointing a specific date. It could have been  
23 slightly earlier than that.  
24 Q. Mr. Troup, Exhibit D-3 is a document that says

Page 13

Page 11

1 Q. Do you know what your job title was in 1999?  
2 A. I think I was called -- no, I don't  
3 specifically remember what it was. It had something  
4 to do with insurance.  
5 Q. Mr. Troup, I am handing you what has been  
6 marked as Exhibit D-1. Do you recognize this  
7 document?  
8 A. (The witness reviews the document.) I can't  
9 say that I, you know, remember receiving this. I may  
10 have.  
11 Q. I'm also going to hand you Exhibit D-2. Both  
12 Exhibit D-1 and Exhibit D-2 say "Emerging Times" on  
13 the top. Do you recall receiving this type of  
14 communication?  
15 A. Yeah. I remember receiving this type of  
16 communication. The title "Emerging Times" is kind  
17 of -- I don't remember that, but that's not to say  
18 that it wasn't issued. It looks like it's an official  
19 company document that would have been handed to  
20 employees.  
21 Q. If you take a look at the second page of  
22 Exhibit D-2, in the first full paragraph, the question  
23 says: "Can you tell us more about the new pension  
24 arrangement?"

1 "Conectiv Cash Balance Plan" on the front and it's  
2 dated February 20th, 1998.  
3 A. Yes.  
4 Q. Have you ever seen this document before?  
5 A. Yeah. This looks like a document that would  
6 have been presented to the employees to outline the,  
7 you know, cash balance pension plan.  
8 Q. Do you recall whether you received this  
9 information in or around February 1998?  
10 MR. SAUDER: Objection. It assumes facts  
11 not in evidence.  
12 THE WITNESS: So --  
13 MR. SAUDER: You can answer to the extent:  
14 Do you know that you have seen this document before?  
15 BY MS. YU:  
16 Q. My question was whether you recalled having  
17 received this in or around February of 1998.  
18 A. Yes. I mean, the first page of the document or  
19 page number 2 where they talk about, you know, the  
20 combination of your pension and your 401(k), you know,  
21 that looks like something that I did see at that  
22 particular time.  
23 MR. SAUDER: I just indicate for the record  
24 that's Bates JMC445.

4 (Pages 10 to 13)

302-655-0477

CONFIDENTIAL  
Thomas S. Troup

Charles, et al.

v.  
C.A. # 05-702

Pepco Holdings, Inc., et al.  
January 12, 2007

Page 14

1 Q. Mr. Troup, you were reviewing various pages in  
2 Exhibit D-3. Is this the type of information, the  
3 information that's contained in D-3, that you received  
4 in 1998?  
5 MR. SAUDER: Objection with regard to "type  
6 of information."  
7 A. Yes. I mean, they talk, you know, in page  
8 number 3, obviously beginning-of-the-year balance, pay  
9 credits, interest credits, end-of-the-year balance.  
10 MR. SAUDER: That's JMC446.  
11 Q. As you look through the document, is there  
12 anything that you feel that was not explained to you  
13 in the 1998 time frame?  
14 MR. SAUDER: Objection. Can you clarify  
15 the question?  
16 Q. Mr. Troup, do you understand the question?  
17 A. Would you repeat it, please?  
18 Q. Sure.  
19 If you could take a look at the information  
20 that's contained in Exhibit D-3 and tell me if you  
21 feel like there's any information in the exhibit that  
22 was not explained to you in the 1998 time frame.  
23 A. (The witness reviews the document.) I don't  
24 remember on page 450 anything about statutory rules

Page 15

1 that will not allow the company to use rates greater  
2 than the 30-year treasury rate.  
3 Page 453, I don't remember receiving any  
4 instructions or explanation with respects to how they  
5 went from the \$200,000 annuity to a value of \$16,949.  
6 And I never heard anything mentioned about  
7 the -- this is page 454 -- the old plan may be frozen  
8 five to ten years into the future. I never remember  
9 hearing anything about a five-year freeze.  
10 Q. Do you recall hearing about a ten-year freeze?  
11 A. Yes.  
12 And I don't remember, page 458, anything  
13 about that at all where there is comparisons of  
14 Delmarva and Atlantic.  
15 And I don't remember seeing anything that  
16 would have had that "W" on the bottom right-hand page.  
17 Q. Anything else in that document?  
18 A. That's all.  
19 Q. Thank you, Mr. Troup.  
20 Mr. Troup, this is Exhibit D-5, which is a  
21 document that says "facts" on the top.  
22 Do you recall receiving documents that  
23 generally look like this?  
24 A. Yes.

Page 16

1 Q. Do you recall receiving this particular  
2 document in Exhibit D-5?  
3 A. It looks like a document that would have been  
4 handed out by the company to the employees. I don't  
5 specifically remember this one, but, you know, I --  
6 the title "facts," the Conectiv logo next to it, you  
7 know, it's their style. I believe I would have  
8 received something like that, yes.  
9 Q. Mr. Troup, if you turn to the third page of  
10 Exhibit D-5, which is numbered PHI3367, which is  
11 actually page 2 of the exhibit, it's numbered page 2,  
12 there is a list of the pension credits, it says  
13 "percentage of pay" in a chart toward the bottom of  
14 the page.  
15 Does this accurately reflect what your  
16 understanding is of the percentage of pay that  
17 participants receive based on their age?  
18 A. Yes.  
19 Q. And those percentages increase as a participant  
20 gets older?  
21 A. Yes.  
22 Q. Then the last paragraph on PHI3367 says: "The  
23 company also credits your account with interest each  
24 year based on the current 30-year U.S. Treasury bond."

Page 17

1 Is that consistent with your understanding  
2 of how the cash balance works?  
3 A. Yes.  
4 Q. If you turn to the page previous to that, which  
5 is PHI3366, which is actually the third page, page 3  
6 of this exhibit, I apologize, it's a little out of  
7 order, there's a description of what the transition  
8 credits will be.  
9 Is this consistent with what your  
10 understanding of what the transition credits were?  
11 A. Yes.  
12 Q. Do you recall which percentage of transition  
13 credits you received?  
14 A. When?  
15 Q. Upon conversion to the cash balance.  
16 A. I would have had 3 percent.  
17 Q. Do you recall receiving this type of  
18 information that we just reviewed that was contained  
19 in Exhibit D-5 prior to January 1st, 1999?  
20 A. I can't recall that I received anything prior  
21 to then. You know, this looks like a document that  
22 outlines the cash balance plan in its more formalized  
23 form. I believe that happened in the, you know, the  
24 early part of '99.

5 (Pages 14 to 17)

CONFIDENTIAL  
Thomas S. Troup

Charles, et al.

v.  
C.A. # 05-702

Pepco Holdings, Inc., et al.  
January 12, 2007

Page 18

Page 20

1 Q. Just to clarify, at the latest it was provided  
2 to you in the early part of 1999. Is it possible it  
3 could have been provided to you in 1998?

4 MR. SAUDER: Objection. Calls for  
5 speculation.

6 A. Possibly.

7 Q. Mr. Troup, what is your date of birth?

8 A. 1/26/49.

9 Q. Are you a member of AARP?

10 A. No, no, haven't done that yet. They've  
11 solicited me.

12 Q. Mr. Troup, why did you bring a lawsuit against  
13 the defendants in this case?

14 A. I felt that I was, you know, being wronged by  
15 the company with respect to, you know, the pension  
16 plan that I'm, you know, being under the cash balance  
17 pension plan. That it would be -- you know, I would  
18 be receiving reduced benefits.

19 Q. Reduced benefits compared to what?

20 A. Compared to the previous plan that was in  
21 place.

22 Q. How is the cash balance plan unfair to you?

23 A. How is the cash balance plan unfair to me?  
24 That if I were to be -- still been under the defined

1 A. Yes, that's correct.

2 Q. Can we refer to that either as the defined  
3 benefit plan or the old plan?

4 A. Yes.

5 Q. How long have you felt that the cash balance  
6 plan has been unfair to you?

7 A. Probably over the last several years, when I  
8 started to seriously think about retiring.

9 Q. Mr. Troup, that is Exhibit D-6, which is a  
10 letter dated December 21st, 1998. Do you recognize  
11 this document?

12 A. Yes, it looks familiar.

13 Q. Do you recall whether you received Exhibit D-6  
14 in or around December 21st, 1998?

15 A. It would probably be around that time, yes.

16 Q. How did you receive the document, a copy of  
17 which is Exhibit D-6?

18 A. I don't remember that.

19 Q. Exhibit D-6 is describing the cash balance  
20 pension plan that was announced earlier in 1998; is  
21 that right?

22 A. Yes.

23 Q. Could you take a few minutes to review the  
24 information in this exhibit and tell me if there is

Page 19

Page 21

1 benefit plan upon the time of my retirement, my  
2 benefits would be greater than under the cash balance  
3 plan.

4 Q. Do you believe that the cash balance plan  
5 discriminates you on the basis of age?

6 A. Yes, I do.

7 Q. Do you believe the cash balance plan  
8 discriminates against everyone on the basis of age?

9 A. I don't know the answer to that.

10 Q. Do you think there are any participants who are  
11 better off under the cash balance plan as compared to  
12 the old plan?

13 A. Again, I don't know the answer to that.

14 Q. How does the cash balance plan discriminate  
15 against you on the basis of age?

16 A. By the formula that's being used, it would  
17 reduce the amount of my accrued pension benefits that  
18 would be in my plan in my account from -- from start  
19 until the date I retire. You know, under the defined  
20 benefit plan, I would be afforded higher benefits,  
21 higher pension benefits.

22 Q. Just to clarify, when you referred to the  
23 "defined benefit plan," you are referring to the plan  
24 that was in effect prior to January 1st of 1999?

1 anything, to the best of your knowledge, that's not  
2 accurately described with respect to the cash balance  
3 plan?

4 MR. SAUDER: Objection to the extent that  
5 it calls for a legal opinion by a lay witness.

6 A. So I can answer or not answer?

7 Q. You can answer.

8 A. Would you repeat the question?

9 Q. Sure.

10 Could you review Exhibit D-6 and tell me,  
11 to the best of your knowledge, whether you think that  
12 there's anything inaccurate in this document?

13 MR. SAUDER: Same objection.

14 You can answer to the extent you  
15 understand.

16 A. I don't know that I would know what was  
17 inaccurate. It looks like it's, you know, questions  
18 about the cash balance plan and answers. I believe  
19 the questions that are answered appear to be answered  
20 accurately, correctly. Is there anything of doubt? I  
21 don't know.

22 Q. The third, fourth, and fifth pages of  
23 Exhibit D-6 --

24 MR. SAUDER: JMC3, 4, and 5.

6 (Pages 18 to 21)

CONFIDENTIAL  
Thomas S. Troup

Charles, et al.

v.  
C.A. # 05-702

Pepco Holdings, Inc., et al.  
January 12, 2007

Page 22

1 Q. -- If you take a look at JMC3, at the top of  
2 the page it says: "Update of Conectiv facts" and it  
3 says it was originally published in the spring of  
4 1998.  
5 If you could take a look at the information  
6 in Exhibit D-5, starting with the first page, which  
7 begins "New cash balance pension plan," and just so  
8 you know, we already have a stipulation on the record  
9 that this substantially the same information contained  
10 in it. I just wanted to get confirmation from you  
11 that this information that was in the December 21st,  
12 1998, letter is substantially similar to the  
13 information contained in Exhibit D-5.  
14 A. Yes.  
15 Q. What was your reaction to being informed of the  
16 change in the cash balance plan that was going to be  
17 effective in 1999?  
18 A. I knew it was a change, a change in, you know,  
19 but that I'd still have a pension and that this was a  
20 plan that the company was coming out with to provide  
21 pension benefits to, you know, at the time, you know,  
22 the management employees and eventually, you know, all  
23 employees.  
24 Q. Is there any information that you wished you

Page 23

1 had gotten in December 1998 about the implementation  
2 of the cash balance plan?  
3 A. You mean at that time?  
4 Q. At that time.  
5 A. No. The company seemed to be answering all  
6 the -- you know, any question that I had. You know,  
7 pension was a benefit, but it wasn't something that  
8 was foremost on my mind at the time. You know, I read  
9 the information. I think I understood what they were  
10 talking about.  
11 Q. Mr. Troup, Exhibit D-7 is a document that says  
12 "Your Conectiv Total Rewards" and it has "1998-99" on  
13 the front cover. Do you recognize this cover page?  
14 A. Yeah. It looks like a cover page of a document  
15 I, you know, I probably received.  
16 Q. Do you know whether you still have a copy of  
17 this document in your possession?  
18 A. I might, but I'm not positive.  
19 Q. Do you have a system in place for information  
20 that you receive from your employer regarding your  
21 pension benefits?  
22 A. I -- you know, I -- you know, I keep some. I  
23 don't keep others. I keep what I think is relevant.  
24 Q. Is there --

Page 24

1 A. Over time, I mean, the company provides you  
2 with, you know, volumes and volumes of paper. You  
3 can't keep it all. I don't -- you know, I don't try  
4 to keep it all.  
5 Q. Is there one central location where you try to  
6 keep it?  
7 A. Yeah, yeah, I have a file drawer that, you  
8 know, talks about benefits, pension, health plan, life  
9 plan, yeah.  
10 Q. Where is that central file?  
11 A. At work.  
12 Q. Did you provide a copy of that file to your  
13 attorney?  
14 A. Yes, that pertained to pension.  
15 Q. So do you think that you have provided  
16 everything in your possession that relates to pension  
17 benefits to your attorneys?  
18 A. All those that I could find, yes.  
19 Q. Mr. Troup, Exhibit D-8 is a document that says  
20 on the front "Conectiv Total Rewards, The tangible and  
21 hidden paychecks." Do you recall ever seeing this  
22 document?  
23 A. (The witness reviews the document.) Based on  
24 the cover page, it's something that I may have

Page 25

1 received. But, you know, when I go through the, you  
2 know, contents inside, there's information here that  
3 doesn't look like I would have received this, this  
4 type of information, some of it from the company.  
5 So, you know, I think my answer to that  
6 would probably be probably not, not something I would  
7 have received if this is the, you know, complete  
8 document that would have been, you know -- you're  
9 asking me, you know, did the company provide that to  
10 me and I don't think so.  
11 Q. That's based on your recollection of what's  
12 contained in the document?  
13 A. Yes.  
14 Q. Exhibit D-9 is a copy of a document that says  
15 "InSight" on the top and it's dated March 1999. Is  
16 this a kind of document you recall having received?  
17 MR. SAUDER: Objection to the form. You  
18 mean documents entitled "InSight"?  
19 MS. YU: Yes.  
20 MR. SAUDER: Okay.  
21 A. Yes, I remember receiving documents entitled  
22 "InSight."  
23 BY MS. YU:  
24 Q. If you look at the second page of Exhibit D-9,

7 (Pages 22 to 25)



CONFIDENTIAL  
Thomas S. Troup

Charles, et al.

v.  
C.A. # 05-072

Pepco Holdings, Inc., et al.  
January 12, 2007

Page 26

Page 28

1 which is PH13429, there is a section on the left-hand  
2 side about the cash balance plan. There is a  
3 reference to cash balance pension plan statements,  
4 that they anticipate going out in June or July of  
5 1999.

6 Did you receive that, an opening statement  
7 in that time frame?

8 **A. I received an opening statement, yes. If**  
9 **that's the -- you know, I'm not -- I don't recollect**  
10 **the specific time frame that I received it, what date,**  
11 **but, you know, I would have to think it would probably**  
12 **be around that time frame possibly.**

13 Q. There's also a reference to cash balance  
14 pension plan meetings for employees. Do you recall  
15 attending a meeting like that?

16 **A. Yeah, I would have gone to a meeting.**

17 Q. Mr. Troup, Exhibit D-10 is a document that says  
18 "Midweek Extra" on the top and it says "Cash balance  
19 update, June 23, 1999." Do you recognize this  
20 document?

21 **A. It looks like a document I would receive from**  
22 **the company.**

23 Q. In the third paragraph of Exhibit D-10 starting  
24 at the second sentence, it says: "Recent stories in

1 **A. (The witness reviews the document.) Yeah.**

2 **Again, it becomes very difficult to answer,**  
3 **specifically. The company provides you with all kinds**  
4 **of communication documents in different formats. For**  
5 **me to sit here and specifically say that, yes, I**  
6 **received this document, I don't know if that would be**  
7 **a truthful answer, you know. But can I say I -- you**  
8 **know, it looks like something I may have received, but**  
9 **I don't know.**

10 Q. These are the types of documents you recall  
11 having received; correct?

12 **A. Yeah, this type.**

13 Q. But you don't have a specific recollection as  
14 to this particular document?

15 **A. I could have been on vacation when this came**  
16 **out. I may not have gotten it as an example of, you**  
17 **know, why I may not have gotten it. You know, it's**  
18 **not something I would have kept, to the best of my**  
19 **knowledge.**

20 Q. Exhibit D-12 is a document that's says "InSight  
21 online" on the top of it. Do you know what that is in  
22 reference to?

23 **A. Well, it mentions here, it says it's Conectiv's**  
24 **intranet resource for corporate news and information.**

Page 27

Page 29

1 the national media have raised concerns about some  
2 cash balance plans that do not offer the same level of  
3 financial security or grandfathering provisions as  
4 Conectiv's cash balance pension plan. One part of the  
5 presentation will address these concerns and  
6 demonstrate how Conectiv's plan is different."

7 Do you recall any of the stories that they  
8 are referring to in the national media?

9 **A. I think they mentioned, you know, that there**  
10 **have been other cash balance plans, you know, that**  
11 **other companies had had and that, you know, their**  
12 **employees had, you know, concerns with respects to. I**  
13 **don't remember specifics or names of the companies or**  
14 **anything that I can recollect.**

15 Q. Mr. Troup, Exhibit D-11 is another document  
16 that's entitled "InSight." This one is dated July  
17 1999. Do you recall whether you received this  
18 document?

19 **A. Again, it looks like a document I would have**  
20 **received, yes.**

21 MR. SAUDER: Mr. Troup, I would just  
22 caution you to listen to the question with regard to  
23 this document. I think the question was: Did you  
24 receive this document?

1 Q. Did you have access to Conectiv's intranet?

2 **A. Yes.**

3 Q. When did this intranet access become available?

4 **A. I think whenever we got a computer. I believe**  
5 **that when we received computers, that to the -- and**  
6 **the intranet was there, you know, we had access to it.**  
7 **Depending upon what your job was, it was something**  
8 **that you needed to do your job, I believe they**  
9 **provided that access to people who had computers.**

10 Q. Did you receive a computer when they first  
11 started rolling out computers?

12 **A. You know, one, I don't remember when that was.**  
13 **I -- you know, I did have a computer. When did I**  
14 **first receive a computer? I don't remember.**

15 Q. Do you remember in what decade?

16 **A. You know, I'm thinking it was in -- you know,**  
17 **it was definitely -- you know, I definitely had a**  
18 **computer in the 1990s. Is that good enough?**

19 Q. To the best of your recollection.

20 **A. Yeah. I can remember, you know, years and**  
21 **years and years ago and I didn't have computer. But,**  
22 **you know, when did I get a computer? I don't**  
23 **remember.**

24 Q. Did you have access to a computer in 1999?

8 (Pages 26 to 29)

CONFIDENTIAL  
Thomas S. Troup

Charles, et al.

v.  
C.A. # 05-702

Pepco Holdings, Inc., et al.  
January 12, 2007

Page 30

1 **A. Yes.**  
2 Q. Did you access the online information on the  
3 intranet from time to time?  
4 **A. You mean this type of information?**  
5 Q. Any type of information.  
6 **A. Company information?**  
7 Q. Yes.  
8 **A. Some. You know, yeah.**  
9 Q. Did you use it to access information on the  
10 cash balance plan?  
11 **A. No, not that I remember.**  
12 Q. Exhibit D-13 is a compilation of slides. The  
13 first one says "Conectiv Cash Balance Pension Plan"  
14 and it's dated July 1999.  
15 Do you recall whether these slides were  
16 part of the presentation made regarding the cash  
17 balance plan in that time frame?  
18 **A. It looks like, you know, the type of handout**  
19 **that would have been provided at a, you know, a**  
20 **meeting to go over the cash balance pension plan.**  
21 Q. Do you recall attending a meeting on the cash  
22 balance plan?  
23 **A. Yeah, I attended a meeting, yes.**  
24 Q. Was it, to your recollection, the July 1999

Page 31

1 time frame?  
2 **A. I thought it would have been sooner than that.**  
3 **If the plan would have been started in 1/1/99, that**  
4 **they would have had meetings prior to its, you know,**  
5 **starting. But, you know, I did attend -- when they**  
6 **had meetings regarding, you know, benefits or**  
7 **whatever, you know, I attended those meetings, yes.**  
8 Q. Will you look at MWW-220, which is the second  
9 page of Exhibit D-13? The first slide on the upper  
10 left-hand corner refers to The Wall Street Journal and  
11 congressional hearings. Do you recall that part of  
12 the discussion?  
13 MR. SAUDER: I just object to the form,  
14 assuming there was a discussion.  
15 But you can answer.  
16 **A. I don't remember congressional hearings. I**  
17 **remember the mention of Wall Street Journal articles,**  
18 **and that's -- you know, I don't remember the rest of**  
19 **it. You know, it's not something that stuck with me**  
20 **from a meeting.**  
21 Q. What's your recollection of the discussion  
22 about Wall Street Journal articles?  
23 **A. That there were companies that, you know, had**  
24 **moved to cash balance pension plans and that, you**

Page 32

1 **know, the employees had concerns.**  
2 Q. Did you do anything to follow up on The Wall  
3 Street Journal articles? Did you look them up on the  
4 Internet?  
5 **A. No, I didn't do that.**  
6 Q. Are there periodicals or newspapers that you  
7 read on a regular basis?  
8 **A. Typically the local paper.**  
9 Q. Which one is that?  
10 **A. It would be The News Journal.**  
11 Q. Are there any other magazines or periodicals  
12 that you read on a regular basis?  
13 **A. No, not really. I watch TV.**  
14 Q. Do you watch the news on TV?  
15 **A. Excuse m?**  
16 Q. Do you watch the news on TV?  
17 **A. Occasionally.**  
18 Q. Do you read the paper every day or less than  
19 every day?  
20 **A. Probably several times a week.**  
21 Q. How long have you been reading your local paper  
22 on a regular basis?  
23 **A. You know, ever since we moved to Delaware,**  
24 **probably.**

Page 33

1 Q. When was that?  
2 **A. 1979.**  
3 Q. When was the first time you consulted with an  
4 attorney regarding your cash balance plan?  
5 **A. I would have made a phone call to Mr. Sauder's**  
6 **firm probably -- I guess it was probably about a year**  
7 **ago.**  
8 Q. Have you spoken with any other attorneys about  
9 the cash balance plan?  
10 **A. Yeah. I had contacted several other attorneys**  
11 **prior to that about, you know, initiating this type of**  
12 **a suit, but, you know, they weren't interested in**  
13 **doing it. And that would have been about, you know,**  
14 **six months to a year prior to that.**  
15 Q. How many attorneys did you consult?  
16 **A. There was one in Wilmington and one in**  
17 **Philadelphia. I don't remember the names, though.**  
18 **I'm sorry.**  
19 Q. How did you first learn about the lawsuit  
20 brought by Mr. Charles, Mr. Ward, and Mr. Fink?  
21 **A. I heard it through the grapevine at work and,**  
22 **you know, since I had been looking to pursue, you**  
23 **know, a suit myself and been unsuccessful, you know,**  
24 **when I heard this, you know, it piqued my interest.**

9 (Pages 30 to 33)



CONFIDENTIAL  
Thomas S. Troup

Charles, et al.

v.  
C.A. # 05-702

Pepco Holdings, Inc., et al.  
January 12, 2007

Page 34

1 Q. How long have you known Mr. Charles?  
2 A. I don't. He's a -- you know, he's an employee.  
3 I never met him.  
4 Q. Have you had any conversations with him at all?  
5 A. Yes. I called him when I heard about the suit  
6 and, you know, asked him questions about it.  
7 Q. Is that the first time you had spoken with him?  
8 A. To the best of my knowledge, yes.  
9 Q. And you called him, he didn't call you?  
10 A. Correct.  
11 Q. Is he the first person that you called about  
12 the lawsuit?  
13 MR. SAUDER: Objection to the form.  
14 A. About this lawsuit?  
15 Q. The lawsuit that was filed by Mr. Charles,  
16 Mr. Ward, and Mr. Fink.  
17 A. Yes, he was the first one that I called because  
18 I knew he -- you know, there was, you know, one in the  
19 works and I called -- you know, I called him.  
20 Q. Do you recall who told you about the lawsuit  
21 initially?  
22 A. No. You know, it was water cooler talk and  
23 they said the names of the people in Atlantic that  
24 were bringing it, and so I made a call.

Page 35

1 Q. Approximately when did that discussion occur  
2 around the water cooler?  
3 A. Approximately it would have been, you know,  
4 probably the day before I spoke to, you know, Jim  
5 Malone.  
6 Q. How many conversations have you had with  
7 Mr. Charles?  
8 A. Of --  
9 MR. SAUDER: Objection. You mean prior  
10 to --  
11 MS. YU: Ever.  
12 MR. SAUDER: Okay.  
13 A. I think I've spoken to him twice.  
14 BY MS. YU:  
15 Q. In the first conversation you had with him when  
16 you called him, what was the substance of your  
17 discussion?  
18 A. You know, what law firm was he using, how do I  
19 get in touch with him.  
20 Q. Did you talk about the claims asserted in the  
21 complaint?  
22 A. No, no. I think just, you know, that, you  
23 know, they were bringing a lawsuit against the company  
24 for the, you know, cash balance pension plan and I

Page 36

1 said I've been looking to do the same thing. How do I  
2 get in touch with the attorney that you're using? And  
3 he gave me the, you know, name and number.  
4 Q. How long did that conversation last?  
5 A. A couple minutes at most.  
6 Q. When was the next conversation that you had  
7 with Mr. Charles?  
8 A. Sometime after I had contact -- sometime in the  
9 early part of 2006. I just called him to say, you  
10 know: Have you heard anything from Jim Malone? How  
11 are things going? And we just kind of chitchatted  
12 about -- he told me, you know, what he knew as to what  
13 was going on with the lawsuit.  
14 Q. Do you recall specifically what he told you?  
15 A. No, not specifically. I was okay with the  
16 information that he told me and, you know -- but  
17 specifically, you know, no, I don't. Specifically, I  
18 don't remember what, you know, he told me.  
19 Q. How long did that conversation last?  
20 A. A minute or two.  
21 Q. Have you had any other conversations with  
22 Mr. Charles?  
23 A. Not that I recall, no.  
24 Q. Have you ever spoken with Mr. Ward, with

Page 37

1 Maurice Ward?  
2 A. No, I don't believe so.  
3 Q. Have you had any conversations with Joseph  
4 Fink?  
5 A. No.  
6 Q. Have you had any conversations with anyone  
7 regarding their deposition testimony?  
8 A. Just with my attorney about my being deposed.  
9 MR. SAUDER: Okay.  
10 Q. What have you done in preparation for your  
11 deposition today?  
12 A. Spoke with my attorney.  
13 Q. Is there anything else you've done?  
14 A. No.  
15 Q. Did you review any documents on your own?  
16 A. Yeah. I looked at the, you know, the  
17 information that was provided to me by my attorney.  
18 Q. Did you review any other documents?  
19 A. No.  
20 Q. Did you review documents with your attorneys?  
21 A. Yes.  
22 Q. Have you had any conversations with your  
23 coworkers about the cash balance plan?  
24 A. Yes.

10 (Pages 34 to 37)

CONFIDENTIAL  
Thomas S. Troup

Charles, et al.

v.

C.A. # 05-702

Pepco Holdings, Inc., et al.  
January 12, 2007

Page 38

1 Q. What kind of conversations have you had?  
2 **A. You know, that it was -- that this is the**  
3 **new -- the pension plan of the company. You know,**  
4 **what -- how it compares against the defined benefit**  
5 **plan, those types of conversations.**  
6 Q. Approximately how many coworkers have you had  
7 those discussions with?  
8 **A. You know, probably less than ten.**  
9 Q. What division of PHI do you work for?  
10 **A. Right now?**  
11 Q. Yes.  
12 **A. I'm in the legal department.**  
13 Q. Were there people in the legal department that  
14 you had discussions with with respect to the cash  
15 balance plan?  
16 **A. I've spoken to my, you know, my manager about**  
17 **it. That's all. You know, the manager of claims.**  
18 Q. Who is the manager of claims?  
19 **A. Howard Yourinson.**  
20 Q. What discussion did you have with him about the  
21 cash balance plan?  
22 **A. You know, comparing it against the defined**  
23 **benefit plan.**  
24 Q. What did he tell you in the context of those

Page 39

1 conversations?  
2 **A. He told me that he was grandfathered; I was**  
3 **not. And then we spoke in -- you know, about -- you**  
4 **know, based upon your age, you know, where are you**  
5 **going to come out when it's time for you to retire,**  
6 **and what would be the -- what would be your benefit**  
7 **under the defined benefit plan versus the cash balance**  
8 **plan.**  
9 Q. In the context of your conversations with your  
10 manager, were you asking whether he could pursue a  
11 complaint?  
12 **A. Whether he could --**  
13 Q. Were you talking to him in the context of your  
14 relationship as manager/employee, or was it more of a  
15 discussion that you had with other workers about the  
16 cash balance plan?  
17 **A. It would have been sort of a, you know, peer**  
18 **level discussion, not as a, you know, employee/manager**  
19 **relationship.**  
20 Q. So was there any formal complaint that you were  
21 trying to lodge with him as your manager?  
22 **A. No.**  
23 Q. Do you think that there's anything about the  
24 cash balance plan that's illegal?

Page 40

1 MR. SAUDER: I just object and caution you  
2 not to answer if it involved anything that you learned  
3 through communications with your attorney. Beyond any  
4 communications with your attorney, if you feel that  
5 you can answer the question, you can go ahead and  
6 answer.  
7 **A. I didn't think it was illegal, no. I mean, I**  
8 **had known that other companies had cash balance plans,**  
9 **so, you know, based upon that, you know, I didn't**  
10 **think that the company would present us something that**  
11 **was illegal.**  
12 Q. We talked a little bit about how you thought  
13 the cash balance plan was unfair.  
14 **A. Yes.**  
15 Q. And you referred to a comparison of the  
16 benefits under the cash balance formula as compared to  
17 the old plan.  
18 Am I right in understanding that that's one  
19 way that you think that the cash balance plan is  
20 unfair?  
21 **A. Yes.**  
22 Q. Is it unfair in any ways other than as compared  
23 to the old plan?  
24 **A. Other than affording, you know, lower -- fewer**

Page 41

1 **benefits at time of retirement for me?**  
2 Q. Yes.  
3 **A. I didn't -- no, I didn't think it was unfair,**  
4 **you know, for any other reason, no.**  
5 Q. Have you done any calculations of what your  
6 benefit would have been under the old plan?  
7 **A. I've made, you know, some, you know, some**  
8 **estimates. You know, you know what your salary is.**  
9 **You know what the factors that are associated with,**  
10 **you know, the defined benefit plan, so you can, you**  
11 **know, estimate what your expected value in the pension**  
12 **plan would be, yes.**  
13 Q. Did you come to any conclusions after having  
14 done those estimates?  
15 **A. Yes.**  
16 Q. What were those conclusions?  
17 **A. That the benefit under the defined benefit plan**  
18 **would be greater than the cash balance plan.**  
19 Q. Did you keep those calculations that you did?  
20 **A. No, because it was something I could replicate**  
21 **at any given time. It was, you know, a thing of, you**  
22 **know, at the moment. So it's not something that I**  
23 **could say that I've -- that I could go to a file and**  
24 **hand it to you right now, no.**

11 (Pages 38 to 41)

Pepco Holdings, Inc., et al.  
January 12, 2007CONFIDENTIAL  
Thomas S. Troupv.  
C.A. # 05-702

Page 44

Page 42

PAGE 43 OF THIS TRANSCRIPT

HAS BEEN DEEMED TO BE CONFIDENTIAL

BY THE PARTIES AND CAN BE FOUND IN A

SEALED ENVELOPE AT END OF THIS

TRANSCRIPT.

1 BY MS. YU:  
2 Q. Mr. Troup, Exhibit D-15 is a copy of an e-mail  
3 trail between Mike Charles and Francis Paoli. Have  
4 you ever seen this document before?

5 A. (The witness reviews the document.) No.

6 Q. Did your first conversation with Mr. Charles  
7 occur after August of 2003?

8 A. Yes.

9 Q. Mr. Troup, you indicated there were  
10 approximately ten coworkers that you had had  
11 conversations with about the cash balance plan?

12 A. Yeah.

13 Q. Could you tell me the names of those  
14 individuals? And if you could spell their names if  
15 they're difficult to spell.

16 A. Well, one was, you know, Howard Yourinson,  
17 Y-o-u-r-i-n-s-o-n. I'm trying to think of who they  
18 might be.

19 MR. SAUDER: I just ask you not to  
20 speculate. If you know the names of the people, then  
21 you can name them and not people who you may have --

22 A. Other than Howard, I don't remember -- you  
23 know, I guess I would be speculating in some respects.  
24 I may or may not have had that conversation with

Page 43

1 Q. What is your current salary?  
2 A. I believe it's around 75,000 a year.

3 MR. SAUDER: I just ask that any  
4 salary-related information be marked as  
5 "Confidential."

6 MS. YU: Certainly.

7 BY MS. YU:

8 Q. Was that approximately what your salary was for  
9 2006?

10 A. I think my salary for 2006 was probably a  
11 little higher because we -- in 2006 we had a -- I'm  
12 trying to think what you would call it because we are  
13 not getting it in 2007. A bonus. So that would have  
14 inflated the 2006 salary over my base salary, and base  
15 salary being the 75,000.

16 Q. What was the bonus amount?

17 A. I think it moved it up to about 81,000.

18 MS. YU: Can we go off the record?

19 (Discussion off the record.)

20 (A recess was taken at this time.)

21

22

23

24

Page 45

1 people. But to -- I don't know that I can name them,  
2 specifically. But I can say that I did have  
3 conversations with other people.

4 Q. Where do you work currently?

5 A. I work in Salisbury, Maryland.

6 Q. How long have you been at that location?

7 A. Six months.

8 Q. How many employees are working at that  
9 location?

10 A. Probably one-200, 100 to 200 people.

11 Q. Where were you working prior to this location?

12 A. 800 King Street, Wilmington.

13 Q. How many employees were at that location?

14 A. It varied. You mean at what particular time?  
15 You know --

16 Q. Right before the move.

17 A. Right before I moved to Salisbury?

18 Q. Yes.

19 A. Thirty or 40.

20 Q. Have you had conversations with coworkers about  
21 the cash balance plan in the last six months?

22 A. Yes.

23 Q. Were these conversations with people who were  
24 working at the same location you were?

12 (Pages 42 to 45)

302-655-0477

CONFIDENTIAL  
Thomas S. Troup

Charles, et al.

v.  
C.A. # 05-702

Pepco Holdings, Inc., et al.  
January 12, 2007

Page 46

1 A. Yes.  
2 Q. Have you ever had any conversations with  
3 coworkers about the cash balance plan other than the  
4 other named defendants in this litigation that were  
5 not working in the same location as you were?  
6 A. Possibly. You know, I may have had a phone  
7 conversation with people, you know, as you're talking  
8 business and it rolls into other subjects. You know,  
9 the cash balance may have been one of those subjects,  
10 yes.  
11 Q. Do you recall who outside of your workplace  
12 they might have been?  
13 A. Outside of the workplace?  
14 Q. Outside of your physical work location.  
15 A. You know, the only one that I specifically  
16 remember, I was riding in a car with a construction  
17 supervisor in the, you know, rural parts of the  
18 eastern shore of Maryland. He was retiring soon or he  
19 talked about retiring soon and I told him I was under  
20 the cash balance pension plan.  
21 That's, you know, the only one specifically  
22 outside of my work location that I can remember, you  
23 know.  
24 Q. What was the name of that individual?

Page 47

1 A. Ronny Newcomb. You know, and it was just two  
2 guys chatting in a car riding down the road.  
3 Q. Other than mentioning that you were in the cash  
4 balance plan, was there anything else that you  
5 discussed with him?  
6 A. Just that I was -- you know, wasn't  
7 grandfathered. That was about it.  
8 Q. Approximately when did this conversation occur?  
9 A. It would have been about -- probably about a  
10 month -- would have been in, I think, December of '06,  
11 about a month ago.  
12 Q. Do you recall approximately when the first  
13 conversation you had with a coworker about cash  
14 balance plan would have been?  
15 A. Well, I mean, we certainly -- you know, I  
16 talked to people, you know, when it first came out and  
17 we had meetings. You know, you talk about it. You  
18 know, you tell people that, you know, you weren't  
19 grandfathered. You know, but, you know, specifically  
20 who they were, I don't remember.  
21 Other than that, I don't -- you know, it  
22 comes up in conversation, you talk about it.  
23 MS. YU: I think this should be D-33.  
24 (Defendant's Exhibit 33 was marked for

Page 48

1 identification.)  
2 BY MS. YU:  
3 Q. We've just marked as Exhibit D-33 a document  
4 that says: "This statement shows the opening Cash  
5 Balance Account on January 1, 1999, for Thomas S.  
6 Troup."  
7 Do you recognize this document?  
8 A. Yes.  
9 Q. Do you recall approximately when you received  
10 this document?  
11 A. Sometime in 1999.  
12 Q. There's some handwritten notations and other  
13 markings. Is that your handwriting?  
14 A. Yes, it is.  
15 Q. Did you make those notations shortly after you  
16 received this document?  
17 A. That I don't remember. You know, it -- with it  
18 showing 1999 and 2000 as the headings under the  
19 columns there and then just arrows going out, that  
20 would lead me to believe that, you know, I would have  
21 done it sometime shortly after receiving it.  
22 Q. Is that your Social Security number that  
23 appears?  
24 A. Yes, it is.

Page 49

1 Q. Is the date of birth and the date of hire  
2 correct?  
3 A. Yes.  
4 Q. Is amount of service credited correct?  
5 A. Yes.  
6 Q. Is there any information that appears in  
7 Exhibit D-33 that is inaccurate to your knowledge?  
8 A. No.  
9 (Defendant's Exhibit 34 was marked for  
10 identification.)  
11 BY MS. YU:  
12 Q. Exhibit D-34 that we just marked is a  
13 collection of statement information. Do you recognize  
14 these documents?  
15 A. Yes.  
16 Q. Do you recall how you received these  
17 statements?  
18 A. I think they mail them to your home.  
19 Q. Can you confirm for me that there is  
20 information regarding the opening balance and ending  
21 balance? I'll just go through the years. It's 2000,  
22 2001, 2002, 2003, and then 2005?  
23 A. Is 2004 there, also?  
24 Q. I'm sorry. Did I miss one? Yes.

13 (Pages 46 to 49)

CONFIDENTIAL  
Thomas S. Troup

Charles, et al.

v.  
C.A. # 05-702

Pepco Holdings, Inc., et al.  
January 12, 2007

Page 50

Page 52

1 So it contains information for each year  
2 from 2000 through 2005?  
3 **A. Yes.**  
4 MR. SAUDER: Just for the record, this is  
5 marked TST2 through TST8.  
6 Q. Is there any information that's contained in  
7 Exhibit D-34 that is inaccurate to your knowledge?  
8 **A. No.**  
9 Q. Does your ending balance increase every year?  
10 **A. Yes.**  
11 **(Defendant's Exhibit 35 was marked for**  
12 **identification.)**  
13 **BY MS. YU:**  
14 Q. Mr. Troup, Exhibit D-35 says "InSight online"  
15 on the top of it and it's dated April 7th, 2000. Do  
16 you recognize this document?  
17 **A. Yes.**  
18 Q. How did you obtain this document?  
19 **A. I think the company provided it to us or I -- I**  
20 **don't specifically remember how I got it, but, you**  
21 **know, it would have been issued by the company, I**  
22 **believe. At the time, Conectiv.**  
23 Q. To your knowledge, did you obtain this document  
24 sometime in April 2000?

1 1997?  
2 **A. It shows what my accrued invested retirement**  
3 **benefit would have been as of January 1st, 1997. And**  
4 **then there's also a chart there that, you know,**  
5 **projects them forward.**  
6 Q. This is personalized information for you?  
7 **A. Yes, correct.**  
8 Q. Have you written any e-mails about the cash  
9 balance plan?  
10 **A. Not that I remember, no.**  
11 Q. Have you gotten any e-mails about the cash  
12 balance plan other than employer communications?  
13 **A. No, not that I'm aware of.**  
14 Q. And I said e-mail generally. Do you have a  
15 home e-mail address?  
16 **A. No. No, I do not.**  
17 Q. You have an e-mail address for work?  
18 **A. Yes.**  
19 Q. Is that the only e-mail account that you use?  
20 **A. Yes. You know, there might be something, you**  
21 **know, sent to my wife, but -- you know, her e-mail**  
22 **address at home, but very little is used there.**  
23 Q. Would there be anything about cash balance  
24 plans on your home e-mail?

Page 51

Page 53

1 **A. Yes, I think so.**  
2 Q. Is this part of the information that was  
3 available online on the intranet?  
4 **A. It appears to be, yes. You know, when the**  
5 **company provides you with communications, you know,**  
6 **they also provide you with a link that you can just**  
7 **kind of click on it and it zips you to it. That's**  
8 **probably how I would have accessed this as opposed to**  
9 **specifically searching for it, you know, on the**  
10 **intranet.**  
11 **(Defendant's Exhibit 36 was marked for**  
12 **identification.)**  
13 **BY MS. YU:**  
14 Q. Exhibit D-36 is a document that says "Your  
15 Total Compensation Statement, 1997," and it has  
16 "Delmarva Power" on it. Do you recognize this  
17 document?  
18 **A. Yes.**  
19 Q. This document is numbered TST10 through 22.  
20 What's described in this document?  
21 **A. The total compensation provided me, you know,**  
22 **by Delmarva Power in the year 1997.**  
23 Q. If you turn to page TST20, are these  
24 calculations showing what your benefits were as of

1 **A. No.**  
2 Q. Mr. Troup, what is your understanding of the  
3 claims that you have brought in your lawsuit?  
4 **A. The accounts, as I understand them, that have**  
5 **been brought is that the company, one, didn't**  
6 **adequately tell us about the fact that the annuity**  
7 **value of the pension plan could go down and that, you**  
8 **know, the annuity value of the plan has gone down and**  
9 **that it's not supposed to go down.**  
10 Q. And when you say it's not supposed to go down,  
11 it's not supposed to go down for any reason?  
12 MR. SAUDER: I just object and just caution  
13 the witness with regard to any attorney/client  
14 communications, if you can answer that question  
15 outside of any attorney/client communications, then  
16 you are free to answer the question.  
17 **A. I don't know how to do that.**  
18 Q. What other claims are you asserting in your  
19 lawsuit?  
20 **A. Those are the ones that I remember. I know**  
21 **there's four counts. I don't specifically remember**  
22 **what the other two are.**  
23 Q. Is part of your claim that you did not get  
24 timely notice?

14 (Pages 50 to 53)



CONFIDENTIAL  
Thomas S. Troup

Charles, et al.

v.  
C.A. # 05-702

Pepco Holdings, Inc., et al.  
January 12, 2007

Page 54

1 **A. Timely notice of what?**  
2 Q. Let's go back to the first item that you listed  
3 with respect to your lawsuit. You said that there was  
4 not disclosure of the fact that the annuity could go  
5 down.  
6 **A. Yes.**  
7 Q. Are you claiming that that disclosure was not  
8 made in a timely way?  
9 **A. I don't remember it being disclosed at all,**  
10 **ever.**  
11 Q. If you could refer back to Exhibit D-6, this  
12 letter is dated December 21, 1998. If you had  
13 received this notice three days earlier, is there  
14 anything that you would have done differently with  
15 respect to the cash balance plan?  
16 **A. Three days earlier than December 21st, 1998?**  
17 Q. Yes.  
18 **A. No. I don't know that three days would make a**  
19 **difference.**  
20 Q. Have you ever requested any pension estimates  
21 from Vanguard?  
22 **A. No.**  
23 Q. Have you been online on their site at all?  
24 **A. Yes.**

Page 55

1 Q. What have you looked for when you were on the  
2 site?  
3 **A. My 401(k) pension. My 401 plan -- 401(k) plan,**  
4 **monies.**  
5 Q. Have you looked up information on your cash  
6 balance plan on the Vanguard site?  
7 **A. I know it's there. It shows -- it shows the**  
8 **balance, the current balance at the end of a year so**  
9 **that --**  
10 Q. But you've never asked for estimates to be done  
11 on the website?  
12 **A. No.**  
13 Q. Is it your understanding that one of the claims  
14 asserted in your complaint is a claim that the cash  
15 balance plan is backloaded?  
16 **A. I don't know what you mean by "backloaded."**  
17 Q. Backloading meaning that significantly more  
18 benefits accrue at the end of your service with the  
19 company as opposed to toward the beginning of your  
20 service with the company.  
21 **A. Say that again, please.**  
22 Q. That backloading means that significantly more  
23 of your benefits accrue at the end of your service  
24 rather than at the beginning of your service.

Page 56

1 **A. Under the cash balance plan?**  
2 Q. Yes.  
3 **A. No, I'm not aware -- I'm not aware that that is**  
4 **the case, and I'm not aware that, you know, that is**  
5 **one of the, you know, points in the lawsuit.**  
6 Q. Do you feel like you've been harmed by the  
7 change to the cash balance formula?  
8 **A. Yes.**  
9 Q. Can you tell me how you've been harmed by it?  
10 **A. Well, that when I do retire, I'll have less**  
11 **money available to me for retirement.**  
12 Q. Is there any other way that you've been harmed?  
13 **A. No. I think that's pretty much it. It comes**  
14 **down to money.**  
15 Q. Money, again, compared to the cash balance plan  
16 as opposed to the benefits under the old plan?  
17 **A. Yes.**  
18 Q. Is it your understanding that the complaint  
19 contains allegations that the cash balance plan is age  
20 discriminatory?  
21 **A. Describe to me "age discriminatory."**  
22 Q. That the cash balance plan hurts older workers  
23 as opposed to younger workers.  
24 **A. Yes.**

Page 57

1 Q. What group of older workers do you think are  
2 worse off under the cash balance plan?  
3 MR. SAUDER: Objection to the extent you're  
4 comfortable answering that without violating any  
5 attorney/client communication.  
6 **A. I don't know how to answer.**  
7 Q. Do you think that there's anybody, any plan  
8 participant who benefits, who is better off because of  
9 the cash balance plan as opposed to the old pension  
10 plan?  
11 **A. I don't know the answer to that.**  
12 Q. How does the plan, the cash balance plan  
13 discriminate against older workers?  
14 MR. SAUDER: Same objection.  
15 **A. It just provides them with lesser monies at**  
16 **retirement.**  
17 Q. Are there certain features of the cash balance  
18 plan that might be more beneficial to an individual  
19 based on their circumstances?  
20 MR. SAUDER: Objection to form.  
21 **A. You know, I don't know how to answer that.**  
22 Q. Do you understand the question?  
23 **A. No.**  
24 Q. Do you understand the cash balance plan to have

15 (Pages 54 to 57)



CONFIDENTIAL  
Thomas S. Troup

Charles, et al.

v.  
C.A. # 05-702

Pepco Holdings, Inc., et al.  
January 12, 2007

Page 58

Page 60

1 portable benefits?  
2 **A. Yes.**  
3 Q. What does that mean?  
4 **A. You leave the company, you can take it with**  
5 **you.**  
6 Q. Is it your understanding that the cash balance  
7 plan is more portable than the benefits under the old  
8 plan?  
9 **A. I believe, yes, that's, you know, that's true.**  
10 Q. So if an employee is looking for portable  
11 benefits, are they better off under the cash balance  
12 plan than under the old plan?  
13 MR. SAUDER: Objection.  
14 **A. You know, I -- I think that depends upon the**  
15 **individual circumstances.**  
16 Q. What remedy are you looking for from the Court  
17 in this lawsuit?  
18 **A. Reinstatement into the defined benefit plan.**  
19 Q. Is there anything else you are looking for?  
20 **A. No.**  
21 Q. Do you understand that this lawsuit has been  
22 brought as a class action?  
23 **A. Yes.**  
24 Q. Are you seeking to be a class representative?

1 **BY MS. YU:**  
2 Q. We have just marked as Exhibit D-37 a copy of  
3 the class action complaint that is captioned Thomas S.  
4 Troup vs. Pepco Holdings, Inc., et al.  
5 Do you recognize this document?  
6 **A. Yes.**  
7 Q. Did you participate in the preparation of this  
8 document, the drafting of this document at all?  
9 **A. No. I mean, you know, my attorneys would have**  
10 **provided me a copy of it, you know, is this**  
11 **information accurate. You know, if that's what you**  
12 **mean by "drafting," the answer would be yes. If, you**  
13 **know -- but putting the form together and, you know,**  
14 **laying it out in this particular order, you know, no.**  
15 Q. If you would take a look at paragraph 39, which  
16 starts on page 13 and continues on to page 14, could  
17 you just review that paragraph for a minute?  
18 **A. (The witness reviews the document.)**  
19 Q. What is your understanding of what an accrued  
20 benefit is?  
21 **A. What is due me at some later date.**  
22 Q. Is it your understanding that under the cash  
23 balance plan your accrued benefit is the amount of  
24 your annuity at age 65?

Page 59

Page 61

1 **A. Yes.**  
2 Q. What's your understanding of your duties as a  
3 class representative?  
4 **A. It would be my duties to represent the**  
5 **interests of the members of the class.**  
6 Q. What is your understanding of how that class is  
7 defined?  
8 **A. It would include those people who are in the**  
9 **cash balance plan and any people who would have been**  
10 **grandfathered after the grandfathering period ends.**  
11 Q. Does that class include everyone regardless of  
12 their age?  
13 **A. I believe so, yes.**  
14 Q. Do you believe that everybody in the class has  
15 the same interests?  
16 **A. Not necessarily, no, not exactly the same**  
17 **interests. I think there is commonality, but, you**  
18 **know, there could be some differences, also.**  
19 Q. Do you think everybody who is part of the class  
20 that you were describing is worse off under the cash  
21 balance plan?  
22 **A. I don't know the answer to that.**  
23 **(Defendant's Exhibit 37 was marked for**  
24 **identification.)**

1 **A. Say that again, please.**  
2 Q. Is it your understanding that under the cash  
3 balance plan your accrued benefit is the annuity  
4 amount that you would receive at age 65?  
5 **A. Until I spoke with my attorney, I wasn't aware**  
6 **that age 65 was a significant date or period of time**  
7 **that applied to, you know, the cash balance plan.**  
8 Q. On page 14 in paragraph 39, the factual  
9 allegations include percentages in various years where  
10 your accrued benefit has decreased and then increased.  
11 Do you know how these percentages were calculated?  
12 MR. SAUDER: Objection to the extent you  
13 can answer that question without violating any  
14 attorney/client communication.  
15 MS. YU: My particular question was does he  
16 know, and it's a yes-or-no answer.  
17 BY MS. YU:  
18 Q. I don't think that you have to rely on your  
19 advice of counsel to answer yes or no whether you know  
20 or not how these were calculated.  
21 **A. No.**  
22 Q. Do you have an understanding of what caused the  
23 increases and decreases?  
24 MR. SAUDER: Same objection.

16 (Pages 58 to 61)

CONFIDENTIAL  
Thomas S. Troup

Charles, et al.

v.  
C.A. # 05-702

Pepco Holdings, Inc., et al.  
January 12, 2007

Page 62

Page 64

1 **A. Do I understand it? No.**  
2 Q. Is it your claim that these fluctuations were  
3 on account of age?  
4 MR. SAUDER: Same objection.  
5 **A. I don't know.**  
6 MS. YU: Can we go off the record?  
7 (Discussion off the record.)  
8 MS. YU: Mr. Troup, I am concluded with my  
9 questioning.  
10 MR. SAUDER: I have no questions.  
11 THE WITNESS: Thank you.  
12 MS. YU: Thank you.  
13 (The deposition was then concluded at  
14 12:05 p.m.)  
15 -----  
16  
17 INDEX TO TESTIMONY  
18  
19 THOMAS S. TROUP PAGE  
20 Examination by Ms. Yu 2  
21  
22 -----  
23  
24

1  
2  
3  
4  
5  
6  
7  
8 REPLACE THIS PAGE  
9  
10 WITH THE ERRATA SHEET  
11  
12 AFTER IT HAS BEEN  
13  
14 COMPLETED AND SIGNED  
15  
16 BY THE DEPONENT.  
17  
18  
19  
20  
21  
22  
23  
24

Page 63

Page 65

1 INDEX TO EXHIBITS  
2  
3 DEFENDANT'S EXHIBIT NO.: PAGE  
4 33 A one-page copy of a document entitled  
5 "Conectiv's Cash Balance Pension Plan" 47  
6  
7 34 A seven-page copy of a document entitled  
8 "Your Cash Balance Account" dated  
9 January 1, 2000 - December 31, 2000 49  
10  
11 35 A one-page copy of a document entitled  
12 "InSight online" dated April 7, 2000 50  
13  
14 36 A multipage copy of a document entitled  
15 "Your Total Compensation Statement, 1997" 51  
16  
17 37 A multipage copy of a Complaint 59  
18  
19 -----  
20  
21  
22  
23  
24

1 State of Delaware )  
2 )  
3 New Castle County )  
4  
5  
6

CERTIFICATE OF REPORTER

7  
8 I, Kathleen White Palmer, Registered  
9 Professional Reporter and Notary Public, do hereby  
10 certify that there came before me on the 12th day of  
11 January, 2007, the deponent herein, THOMAS S. TROUP,  
12 who was duly sworn by me and thereafter examined by  
13 counsel for the respective parties; that the questions  
14 asked of said deponent and the answers given were  
15 taken down by me in Stenotype notes and thereafter  
16 transcribed into typewriting under my direction.

17 I further certify that the foregoing is  
18 a true and correct transcript of the testimony given  
19 at said examination of said witness.

20 I further certify that I am not counsel,  
21 attorney, or relative of either party, or otherwise  
22 interested in the event of this suit.  
23  
24

Kathleen White Palmer, RPR, RMR, CLR  
Certification No. 149-RPR  
(Expires January 31, 2008)

DATED: January 15, 2007

17 (Pages 62 to 65)

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF DELAWARE

3 PORTIONS CONFIDENTIAL

4 J. MICHAEL CHARLES; MAURICE W.  
5 WARD, JR.; and JOSEPH I. FINK, JR.,  
6 on behalf of themselves and  
all others similarly situated,

Plaintiff

V C.A. No. 05-702 (SLR)

7  
8 PEPCO HOLDINGS, INC.; CONECTIV, and  
PEPCO HOLDINGS RETIREMENT PLAN,  
Defendants

9 - - -  
10 THOMAS S. TROUP, on behalf of himself  
and all others similarly situated,

Plaintiff

12 V C.A. No. 06-10 (SLR)  
13 PEPCO HOLDINGS, INC.; CONECTIV, and  
PEPCO HOLDINGS RETIREMENT PLAN,

Defendants

15 Oral deposition of MAURICE  
16 W. WARD, JR., taken at the law  
17 offices of Pepper Hamilton LLP, 3000  
18 Two Logan Square, Eighteenth and Arch  
19 Streets, Philadelphia, Pennsylvania,  
20 on Wednesday, January 10, 2007,  
21 commencing at 9:40 a.m., before  
22 Barbara McKeon Quinn, a Registered  
23 Merit Reporter and Notary Public,  
24 pursuant to notice.

## ORAL DEPOSITION OF MAURICE W. WARD, JR., 1/10/07

Page 2

Page 4

1 APPEARANCES:  
 2 JOSEPH G. SAUDER, ESQUIRE  
 3 josephsauder@chimicles.com  
 4 CHIMICLES & TIKELLIS LLP  
 5 One Haverford Centre  
 6 361 West Lancaster Avenue  
 7 Haverford, Pennsylvania 19041  
 8 610-642-8500  
 9 Counsel for Plaintiff  
 10  
 11 BARAK A. BASSMAN, ESQUIRE  
 12 bassmanb@pepperlaw.com  
 13 SUSAN KATZ HOFFMAN, ESQUIRE  
 14 PEPPER HAMILTON LLP  
 15 3000 Two Logan Square  
 16 18th & Arch Streets  
 17 Philadelphia, Pennsylvania 19103  
 18 215-981-4000  
 19 Counsel for Defendants  
 20  
 21 EXAMINATION INDEX  
 22 MAURICE W. WARD, JR.  
 23 BY MR. BASSMAN 4  
 24  
 25 EXHIBIT INDEX  
 26 MARKED  
 27 Defendant's  
 28 21 Vanguard Pension 49  
 29 Estimator document, MWW  
 30 334 through 393  
 31  
 32 22 Introducing the New Cash 110  
 33 Balance Retirement Plan  
 34 MWW 308 through 311  
 35  
 36 23 Letter to Plan 112  
 37 Participant from Curriden  
 38 dated September 2002, MWW  
 39 127  
 40

1 MAURICE W. WARD, JR.,  
 2 having been duly sworn, was examined  
 3 and testified as follows:  
 4 MR. SAUDER: I'd like the  
 5 witness to read and sign.  
 6 EXAMINATION  
 7 BY MR. BASSMAN:  
 8 Q. Good morning, Mr. Ward. We  
 9 met just a moment ago. My name is  
 10 Barak Bassman. I'm an attorney for  
 11 the defendants in this case.  
 12 I know there are a lot of  
 13 different defendants and parties in  
 14 this case, some of whom were formed  
 15 by other parties and other companies.  
 16 So to keep everything  
 17 simple as we go along today, I'm  
 18 going to refer to all the defendants  
 19 and all their predecessors  
 20 collectively as Conectiv. Is that  
 21 okay?  
 22 A. Sure.  
 23 Q. If I'm referring to any  
 24 specific particular entity, other

Page 3

Page 5

1 EXHIBIT INDEX (CONTINUED)  
 2 MARKED  
 3 Defendant's  
 4 24 Retirement Plan, Cash 114  
 5 Balance Sub-Plan  
 6 Delmarva Sub-Plan, ACE  
 7 Sub-Plan, Summary Plan  
 8 Description dated  
 9 September 2002  
 10 25 Plaintiffs' Consolidated 126  
 11 Initial Disclosures  
 12  
 13 26 Statement to Ward from 150  
 14 Vanguard for 1/1/01  
 15 through 1/31/01, MWW 4  
 16 and 5  
 17 27 Statement to Ward from 150  
 18 Vanguard for 1/1/02  
 19 through 1/31/02, MWW 6  
 20 and 7  
 21  
 22 28 Statement to Ward from 150  
 23 Vanguard for 1/1/03  
 24 through 1/31/03, MWW 8  
 25 and 9  
 26 29 Statement to Ward from 150  
 27 Vanguard for 1/1/04  
 28 through 1/31/04, MWW 10  
 29 and 11  
 30  
 31 30 Statement to Ward from 150  
 32 Pepco Holdings for 1/1/05  
 33 through 1/31/05, MWW 12  
 34 and 13  
 35  
 36  
 37  
 38  
 39  
 40

1 than all of them, I'll let you know.  
 2 But if I use the word Conectiv in a  
 3 question, feel free to assume that's  
 4 every one of the defendants, ACE,  
 5 DelMarVa and so on.  
 6 A. Okay.  
 7 Q. As you can see, the court  
 8 reporter is writing down everything  
 9 that we're saying today. Because of  
 10 that, it's very important that you  
 11 answer all my questions verbally.  
 12 She can't write down a  
 13 shrug or a nod or a shake of the head  
 14 or anything like that. So I'd ask  
 15 that you please answer everything  
 16 verbally.  
 17 A. Okay.  
 18 Q. Also, again, I'll try not  
 19 to talk over you and I ask that you  
 20 try not to talk over me, just because  
 21 that will make things easier for the  
 22 court reporter as she's writing  
 23 everything down and it creates a  
 24 smoother record.

Page 6

Page 8

1 A. Okay.  
 2 Q. If I ask you a question and  
 3 you don't understand what I'm saying,  
 4 please let me know. I'm not here to  
 5 trick you or fool you.  
 6 Misunderstandings happen.  
 7 So if there's anything that  
 8 I ask you and you don't understand,  
 9 please just let me know and I'll  
 10 rephrase. If you do answer my  
 11 question, I'm going to assume you  
 12 understand it.  
 13 A. Okay. That's clear.  
 14 Q. If at any time you need a  
 15 break, need to use the rest room,  
 16 stretch your legs, whatever, just let  
 17 me know. This isn't, you know, an  
 18 interrogation in a secret detention  
 19 facility.  
 20 Let me know and I'll try to  
 21 wrap up my line of questioning as  
 22 soon as possible.  
 23 A. Okay. Thanks.  
 24 Q. I just want to ask, is

1 Q. And what documents did you  
 2 look at?  
 3 A. The Complaint. That was  
 4 basically it.  
 5 Q. Okay. I'd like to just  
 6 start by going through a bit of your  
 7 background. What year did you  
 8 graduate from high school?  
 9 A. 1973.  
 10 Q. And where did you graduate  
 11 from?  
 12 A. Absegamie High School.  
 13 Q. Where is that?  
 14 A. In Mays Landing, New  
 15 Jersey.  
 16 Q. Do you have any education  
 17 after high school?  
 18 A. Yes. I have two years of  
 19 college.  
 20 Q. Where were they?  
 21 A. Atlantic Community College.  
 22 Q. Did you get an Associate's  
 23 degree?  
 24 A. Yes, I did.

Page 7

Page 9

1 there any reason today that you can't  
 2 testify fully and truthfully?  
 3 A. No.  
 4 Q. Anything medical, physical  
 5 today impairing your memory in any  
 6 way?  
 7 A. No.  
 8 Q. What did you do to prepare  
 9 for today's deposition?  
 10 A. As far as?  
 11 Q. Did you meet with anyone?  
 12 A. We, we met.  
 13 Q. Besides your lawyer, did  
 14 you meet with anybody else?  
 15 A. No.  
 16 Q. Did you talk about today's  
 17 deposition with anyone other than  
 18 your lawyer?  
 19 A. No.  
 20 Q. Did you review any  
 21 documents to get ready for today's  
 22 deposition?  
 23 A. Not any time real soon. I  
 24 mean, over the last week or so.

1 Q. Do you have a major field?  
 2 A. Electronics.  
 3 Q. After you got your  
 4 Associate's, any more education?  
 5 A. A few college classes.  
 6 Q. Do you remember what they  
 7 were in?  
 8 A. Statistics.  
 9 Q. And where did you take  
 10 those?  
 11 A. Stockton.  
 12 Q. That's in Trenton?  
 13 A. No. It's in Pomona or  
 14 Galloway Township. I think that's  
 15 it, yeah.  
 16 Q. And when did you get your  
 17 Associate's degree?  
 18 A. 1975.  
 19 Q. And when did you take the  
 20 classes at Stockton?  
 21 A. Just over the next few  
 22 years. I took like one or two  
 23 classes.  
 24 Q. So sort of over the course

Page 10

Page 12

1 of the late '70s?  
 2 A. That's correct.  
 3 Q. What was the first job you  
 4 had after graduating community  
 5 college?  
 6 A. I worked as an electronics  
 7 technician for Rainbow Electronics.  
 8 Q. How long were you there?  
 9 A. For about a year.  
 10 Q. Where did you go from  
 11 there?  
 12 A. New Jersey State Police.  
 13 Q. And how long were you a  
 14 policeman?  
 15 A. No. I was a civilian. I  
 16 was a radio technician.  
 17 Q. How long were you a radio  
 18 tech at the police?  
 19 A. Approximately about a year.  
 20 Q. Then where did you go?  
 21 A. The FAA, Federal Aviation  
 22 Administration.  
 23 Q. What did you do for the  
 24 FAA?

1 go over a couple things about your  
 2 other jobs. When you worked for  
 3 Rainbow Electronics, were you a  
 4 member of a union?  
 5 A. No.  
 6 Q. And where was that company  
 7 located?  
 8 A. In Northfield, New Jersey.  
 9 Northfield, New Jersey.  
 10 Q. When you were in the state  
 11 police as a radio tech, were you a  
 12 union member?  
 13 A. No. Oh, boy. No, I don't  
 14 think so.  
 15 Q. Okay. Same question for  
 16 the FAA.  
 17 A. I was part of -- we were  
 18 part of a union, yes, subsidiary of  
 19 air traffic control unit.  
 20 Q. When you were a union  
 21 member at the FAA, did you hold any  
 22 positions in that union?  
 23 A. No.  
 24 Q. So you joined Atlantic City

Page 11

Page 13

1 A. I was a computer tech.  
 2 Q. For how long?  
 3 A. Four or five years.  
 4 Q. Was that in New Jersey or  
 5 in D.C.?  
 6 A. It was actually in New  
 7 York.  
 8 Q. Okay. Where did you go  
 9 when you left the FAA?  
 10 A. Actually I worked in New  
 11 York for a couple years and then back  
 12 in New Jersey for a few years. So I  
 13 left there to go with the Atlantic  
 14 City Electric or Atlantic Electric at  
 15 the time.  
 16 Q. Have you been at Atlantic  
 17 City Electric or its successors ever  
 18 since?  
 19 A. Yes.  
 20 Q. When was your start date at  
 21 Atlantic City?  
 22 A. October of '81.  
 23 Q. Before we get into your  
 24 time at Atlantic City, I just want to

1 in October of 1981. Could you walk  
 2 through for me the different  
 3 positions that you've held at  
 4 Atlantic City?  
 5 A. I was an engineering  
 6 assistant in the meter department.  
 7 Q. When were you the  
 8 engineering assistant?  
 9 A. For the first maybe six or  
 10 seven years of my career. I can't  
 11 remember exact dates.  
 12 Q. That's okay. Again, as we  
 13 go throughout this, I mean I might be  
 14 trying to jog your memory about  
 15 things in years past, which is a bad  
 16 habit that all lawyers have.  
 17 The best that you can  
 18 remember. I mean, neither I nor your  
 19 counsel want you to guess or  
 20 speculate.  
 21 A. Okay. The job title  
 22 changed a number of times, so -- but  
 23 it was basically the same job in  
 24 engineering.



Page 14

Page 16

1 Q. And what did you do in that  
2 job?  
3 A. I was in the meter  
4 department as an engineering person  
5 to do -- purchase material and design  
6 metering installations and support  
7 the department.  
8 Q. When you were in that  
9 position, were you a member of a  
10 union?  
11 A. No.  
12 Q. What was your next job at  
13 Atlantic City?  
14 A. Supervisor, meter  
15 supervisor.  
16 Q. How long were you a meter  
17 supervisor?  
18 A. Until approximately three  
19 years ago.  
20 Q. Okay. So around '87, '88  
21 until '03, '04?  
22 A. Yes. That's correct.  
23 Q. I assume as a supervisor  
24 you weren't in a union.

1 Q. And that's the job you hold  
2 today?  
3 A. That's correct.  
4 Q. Before this case, were you  
5 ever involved as a plaintiff in any  
6 lawsuits?  
7 A. No.  
8 Q. Ever involved as a  
9 defendant?  
10 A. No.  
11 Q. Ever testify in any  
12 lawsuits?  
13 A. I -- not in any lawsuits,  
14 no.  
15 Q. Did you testify in some  
16 other proceeding?  
17 A. Just as a -- I think I did  
18 a deposition once as a -- in the  
19 meter department as a, I guess an  
20 expert witness or something for the  
21 BPU hearing I think it was or  
22 something.  
23 Q. That's a state  
24 administrative?

Page 15

Page 17

1 A. No. That's correct.  
2 Q. And what did you do as a  
3 meter supervisor?  
4 A. Supervise all the field  
5 meter people that worked out of the  
6 Cologne meter office and the shop  
7 operations in Cologne.  
8 Q. When you say shop  
9 operations --  
10 A. We had a meter test  
11 facility there.  
12 Q. Okay. After you were a  
13 meter supervisor, what has your  
14 position been?  
15 A. Since that time I'm the  
16 communications supervisor for  
17 Atlantic City Electric obviously.  
18 Q. What do you do as  
19 communications supervisor?  
20 A. Supervise the seven  
21 communications technicians.  
22 Q. I assume as a supervisor  
23 you're not in the union.  
24 A. That's correct.

1 A. That's correct.  
2 Q. Do you remember when that  
3 was?  
4 A. No, I don't.  
5 Q. Would you say it's more  
6 than five years ago?  
7 A. Yes, it was.  
8 Q. More than ten years ago?  
9 A. Boy, I don't know. I  
10 couldn't put a date on it.  
11 Q. Okay. Ever been convicted  
12 of a crime?  
13 A. No.  
14 Q. You mentioned you were a  
15 union member at the FAA; correct?  
16 A. Yes.  
17 Q. Did you ever file a  
18 grievance with the union when you  
19 were there?  
20 A. No.  
21 Q. Have you ever filed an  
22 administrative action with a pension  
23 plan?  
24 A. No.

Page 18

Page 20

1 Q. From the time you started  
2 at Atlantic City until January 1,  
3 1999, looking at that time period,  
4 what is your understanding as to how  
5 your pension benefits were  
6 calculated?

7 A. I'm not sure I understand  
8 the question.

9 Q. Let me break that down a  
10 little.

11 A. Okay.

12 Q. When you started at  
13 Atlantic City, did you have an  
14 understanding as to whether there was  
15 a pension plan in place?

16 A. Yes. Yes, I did.

17 Q. Did you review any  
18 documents at that time about what the  
19 pension plan was, how it worked?

20 A. I knew it was a retirement  
21 plan that I could retire at age 55.

22 Q. So you knew it had an early  
23 retirement option.

24 A. That's correct. With no

1 hired in '81 and January 1, 1999, did  
2 your understanding as to how your  
3 pension benefits were calculated or  
4 what pension benefits were available  
5 to change in any way?

6 A. Could you get more specific  
7 about that?

8 Q. Sure. You mentioned in  
9 1981 that you had a vague  
10 understanding when you started  
11 Atlantic City there was a pension  
12 plan in place, it had an early  
13 retirement benefit, you could take it  
14 as annuity or a lump sum, right?

15 A. That's correct.

16 Q. Between the time you  
17 started and you had that  
18 understanding and January 1 of 1999,  
19 did your understanding as to what  
20 rights you had under the pension plan  
21 change in any way?

22 A. In I guess it was towards  
23 the end of 1998 there were some  
24 preliminary meetings on the cash

Page 19

Page 21

1 penalties at that time.

2 Q. Did you have any  
3 understanding as to how the amount of  
4 your pension was going to be  
5 computed?

6 A. Vaguely. Not, not in any  
7 detail.

8 Q. What was your vague  
9 understanding?

10 A. That -- no. I just really  
11 had a basic understanding of the  
12 plan. Just that it was -- it was --  
13 I could take it in a lump sum or I  
14 could get a monthly annuity.

15 Q. Did you have any  
16 understanding, and again, this is  
17 back when you started in '81, as to  
18 how the annuity was calculated?

19 A. Not the specifics of it,  
20 no.

21 Q. Have you ever heard the  
22 term final average pay plan?

23 A. No.

24 Q. Between the time you were

1 balance plan that was going to be  
2 implemented.

3 Q. Okay. Leaving aside the  
4 cash balance plan, we'll get to it in  
5 a little bit.

6 A. Okay. Okay.

7 Q. Did your understanding ever  
8 change as to how the pre cash balance  
9 plan worked?

10 A. No.

11 Q. Do you subscribe to any  
12 newspapers?

13 A. No.

14 Q. Do you read any newspapers  
15 regularly?

16 A. Not regularly, no.

17 Q. Anything you read just  
18 occasionally?

19 A. The AARP newspaper. No.  
20 Just the Atlantic City Press I do  
21 look at occasionally.

22 Q. And when you say  
23 "occasionally," is this maybe once or  
24 twice a week?

Page 22

Page 24

1 A. Maybe once a week.  
 2 Q. Usually at least once a  
 3 month?  
 4 A. Yes, I would say.  
 5 Q. And how long have you been  
 6 looking at the Atlantic City Press  
 7 around once a month at least?  
 8 A. Probably most of my life.  
 9 Q. Certainly since the time  
 10 you've been working for Atlantic City  
 11 Electric; is that right?  
 12 A. Yes, that's correct.  
 13 Q. Again, as I said earlier,  
 14 you know, it's normal in conversation  
 15 to just nod.  
 16 A. Yeah. Okay.  
 17 Q. The court reporter is  
 18 taking a record, so we've got to make  
 19 sure that everything's verbalized.  
 20 A. Okay.  
 21 Q. Ever read any other  
 22 newspapers?  
 23 A. Not on a regular basis, no.  
 24 Q. Read anything else

1 Q. When did you join the AARP?  
 2 A. When I turned 50, so it was  
 3 a year and a half ago.  
 4 Q. And you mentioned they have  
 5 a newspaper. Do they send you  
 6 publications in the mail?  
 7 A. Yes. I think it's once a  
 8 month we get a newspaper, like a  
 9 paper.  
 10 Q. Do you read the  
 11 publications they send you?  
 12 A. Glance through it  
 13 occasionally.  
 14 Q. Have you ever attended any  
 15 meetings conducted by the AARP?  
 16 A. No, I haven't.  
 17 Q. Have you ever belonged to  
 18 any other organizations besides the  
 19 AARP?  
 20 A. United States Golf  
 21 Association, but other than that, no.  
 22 Q. That one sounds like a lot  
 23 more fun than the AARP.  
 24 A. Yeah. Yeah. You're right.

Page 23

Page 25

1 irregularly?  
 2 A. As far as newspapers are  
 3 concerned?  
 4 Q. Yeah.  
 5 A. No, not really. I mean  
 6 maybe an occasional, you know, the  
 7 U.S. News Today, or whatever that is.  
 8 Q. Oh, U.S.A. Today?  
 9 A. U.S.A. Today, yeah.  
 10 Occasionally.  
 11 Q. And do you read any  
 12 magazines regularly?  
 13 A. Not regularly, no.  
 14 Q. Any ones you read  
 15 occasionally?  
 16 A. Occasionally Golf magazine,  
 17 auto, you know, magazines.  
 18 Q. Anything else you can think  
 19 of?  
 20 A. No. Not really. Like I  
 21 say, I get an AARP newspaper once a  
 22 month. I look at that.  
 23 Q. Are you an AARP member?  
 24 A. Yes, I am.

1 Q. Do you have an Internet  
 2 connection in your home?  
 3 A. Yes, I do.  
 4 Q. Is it a dial-up or high  
 5 speed?  
 6 A. Now it's high speed.  
 7 Q. When did you get an  
 8 Internet hookup?  
 9 A. Couldn't give you an exact  
 10 date, but I've had it, I've had  
 11 dial-up for a number of years and I  
 12 recently converted to high speed  
 13 Internet.  
 14 Q. Would you say you've had  
 15 dial-up at least five years?  
 16 A. Yes.  
 17 Q. Do you have a home e-mail  
 18 address?  
 19 A. Yes, I do.  
 20 Q. What is it?  
 21 A. Mcwardjr@comcast.net.  
 22 Q. How long have you had that  
 23 e-mail address?  
 24 A. About maybe three months,

Page 26

Page 28

1 something like that.  
 2 Q. Did you have a personal  
 3 e-mail address before that one?  
 4 A. Yes.  
 5 Q. What was it?  
 6 A. Mcward@att.net, and I still  
 7 have that e-mail address also.  
 8 Q. How long did you have the  
 9 att.net e-mail?  
 10 A. Couldn't give you an exact  
 11 date, but I -- more than three years.  
 12 Q. Do you use your home e-mail  
 13 account frequently?  
 14 A. Yes.  
 15 Q. Check it every day?  
 16 A. Pretty much.  
 17 Q. Send messages mostly every  
 18 day?  
 19 A. Maybe not every day, but  
 20 yeah.  
 21 Q. Regularly?  
 22 A. Regularly, yeah.  
 23 Q. Do you have Internet access  
 24 at work?

1 Q. What do you do with those  
 2 pages after you print them?  
 3 A. I toss them normally. Just  
 4 it's easier to read than using the  
 5 screen.  
 6 Q. Have you tossed any since  
 7 this lawsuit was filed?  
 8 A. I don't think I have any,  
 9 so yes, I assume I have.  
 10 Q. Are there any websites in  
 11 particular you look at for pension  
 12 issues?  
 13 A. None in particular come to  
 14 mind. Just a Google search.  
 15 Q. For example, can you give  
 16 me some examples of Google searches  
 17 you've run?  
 18 A. I ran a search when I heard  
 19 about the IBM cash balance suit and  
 20 just did a Google search on it and  
 21 read a little bit about it.  
 22 Q. When did you hear about  
 23 that lawsuit?  
 24 A. Boy, I don't -- I would say

Page 27

Page 29

1 A. Yes.  
 2 Q. How long have you had  
 3 Internet access on the job?  
 4 A. Couldn't give you an exact  
 5 date on that. It was part of a  
 6 package I guess for a while.  
 7 Q. You have a work e-mail  
 8 address, right?  
 9 A. That's correct. I think we  
 10 have two basically.  
 11 Q. Did you ever research  
 12 pension related issues on the  
 13 Internet?  
 14 A. Occasionally, yes.  
 15 Q. When you research pension  
 16 related issues on the Internet, do  
 17 you print out the pages that you're  
 18 reading or not?  
 19 A. I may have occasionally. I  
 20 normally don't. I don't think. No.  
 21 No, not normally.  
 22 Q. But you have in the past  
 23 printed some pages?  
 24 A. Yes, I have.

1 it had to be probably sometime maybe  
 2 mid, late 2004 maybe. It had to be a  
 3 couple of years.  
 4 Q. Do you remember how you  
 5 heard about it?  
 6 A. Just through work, people  
 7 talking.  
 8 Q. Do you remember from whom  
 9 in particular?  
 10 A. No, I don't.  
 11 Q. Did you talk to Mr. Charles  
 12 about the IBM lawsuit?  
 13 A. I don't remember. I assume  
 14 we had the discussion about it, but I  
 15 don't remember exactly when and if we  
 16 talked about that specifically.  
 17 Q. Okay. Actually I should  
 18 back up for a second. Do you know  
 19 Mr. Charles?  
 20 A. Yes, I do.  
 21 Q. How long have you known  
 22 him?  
 23 A. Probably over 20 years.  
 24 Q. Did you two meet shortly

Page 30

Page 32

1 after you went to work for Atlantic  
2 City?

3 A. He worked in the same  
4 department I worked in.

5 Q. Would you consider him a  
6 friend?

7 A. Yes.

8 Q. Do you see him socially?

9 A. Not normally, no.

10 Q. Do you two still work in  
11 the same facility, physical facility?

12 A. No, we don't.

13 Q. Do you know Mr. Fink?

14 A. Yes, I do.

15 Q. How long have you known  
16 him?

17 A. More than -- probably more  
18 than 15 years.

19 Q. Did you meet him on the job  
20 as well?

21 A. Yes, that's correct.

22 Q. Would you call him a  
23 friend?

24 A. Yes.

1 in.

2 A. Okay.

3 Q. Just to make things  
4 simpler. You mentioned that in 1998  
5 there were meetings about the cash  
6 balance plan.

7 A. That's correct.

8 Q. Were those meetings you  
9 attended?

10 A. I attended one or two  
11 initial meetings.

12 Q. And those were initial  
13 meetings in 1998?

14 A. Yes. I think they were at  
15 the end of '98.

16 Q. Who do you remember  
17 attended those meetings?

18 A. I don't remember.

19 Q. Were these one on one  
20 meetings or was this a group meeting?

21 A. Group meeting.

22 Q. Was there someone from  
23 Conectiv HR department who conducted  
24 the meeting?

Page 31

Page 33

1 Q. Do you see him socially at  
2 all?

3 A. I have.

4 Q. And Mr. Troup. Do you know  
5 him?

6 A. No, I don't.

7 Q. Have you heard of him?

8 A. Yes, I have.

9 Q. Because of this lawsuit or  
10 in another context?

11 A. That's correct.

12 Q. Because of this lawsuit?

13 A. Yes, that's correct.

14 Q. Now, you mentioned earlier  
15 meetings in 1998 about the cash  
16 balance plan. And I think just for  
17 making this a clear record, I think  
18 the cash balance plan is technically  
19 referred to as the cash balance sub  
20 plan of a larger plan.

21 Just as we go forward  
22 today, I will just use the term cash  
23 balance plan to refer to the cash  
24 balance sub plan that you participate

1 A. I don't remember.

2 Q. But there was a presenter  
3 at the meeting?

4 A. That's correct.

5 Q. And you were in the  
6 audience at the meeting?

7 A. That's correct.

8 Q. What do you remember the  
9 presenter telling you from these  
10 initial meetings in 1998 about the  
11 cash balance plan?

12 A. I don't remember a lot  
13 about the presentations except the  
14 one thing that stuck in my mind was  
15 that it was, the new plan was going  
16 to be a portable plan, and that would  
17 be -- and that there wasn't a lot of  
18 specifics about the plan at that  
19 time. More data was to follow.

20 Q. With the advantage of  
21 hindsight, do you believe that the  
22 presenters in those meetings at the  
23 end of 1998, or presenter, made any  
24 misrepresentations?

Page 34

Page 36

1 A. I don't really remember  
2 enough about the presentation to  
3 really answer that correctly.  
4 Q. From what you recall,  
5 though, you don't remember them  
6 saying anything that you later found  
7 out was untrue; is that right?  
8 A. Can't put my finger on  
9 anything, no, because they were  
10 pretty generic.  
11 Q. Very broad, very general  
12 type of presentation?  
13 A. That's correct. Yes.  
14 Q. Again, we need to be a  
15 little careful about talking over  
16 each other.  
17 A. Sorry.  
18 Q. So again, just wait until I  
19 finish and then you'll go. It will  
20 just make things easier for the court  
21 reporter.  
22 A. Okay.  
23 Q. What is your understanding,  
24 sitting here today, as to how pension

1 that interest rate is the same for  
2 everybody in the cash balance plan?  
3 A. I think that the rate it  
4 grows by some interest rate I think  
5 is the same, yes.  
6 Q. Do you have any  
7 understanding where that interest  
8 rate comes from?  
9 A. It has to do with the  
10 treasury note I think or the treasury  
11 bond, but I'm not sure.  
12 Q. And it can vary from year  
13 to year?  
14 A. That's correct.  
15 Q. But within each year  
16 everybody in the plan gets the same  
17 interest rate?  
18 A. As far as I know, yes.  
19 Q. Okay. And again, I'm just  
20 talking about your understanding.  
21 A. Yes. There's a document  
22 around here that explains it all, but  
23 yeah.  
24 Q. Now, you mentioned there

Page 35

Page 37

1 benefits are calculated under the  
2 cash balance plan?  
3 A. That my -- an opening  
4 balance was created and that some  
5 number is put into my account based  
6 on my age, years of service, and some  
7 interest number.  
8 Q. You mentioned that the  
9 amount of money put into your account  
10 can vary based on your age and years  
11 of service, right?  
12 A. I think, yes.  
13 Q. And is that because the  
14 older you are, the more years of  
15 service there are, the more money  
16 goes into your account?  
17 A. That's my understanding.  
18 Q. You mentioned an interest  
19 rate. That's an amount of interest  
20 that's added to your account each  
21 year. Is that your understanding?  
22 A. That's how much -- the  
23 account grows by some interest rate.  
24 Q. Is it your understanding

1 were these meetings in 1998. Before  
2 the meetings had you heard anything  
3 about a cash balance plan coming?  
4 A. No.  
5 Q. How did you find out about  
6 the meetings?  
7 A. Can't remember if it was a  
8 memo that was sent out. I was  
9 notified some kind of way through  
10 work.  
11 Q. Through what I call  
12 generically official management  
13 channels?  
14 A. That's correct. As part of  
15 the merger package basically, yeah.  
16 Information.  
17 Q. When you say merger, I  
18 assume you're referring to the merger  
19 between Atlantic City and DelMarVa?  
20 A. That's correct.  
21 Q. Again, slow down a little.  
22 A. Sorry.  
23 Q. That's okay. At a certain  
24 point in time, did you become



Page 38

Page 40

1 suspicious that the cash balance plan  
2 violated your rights?

3 A. At the time of the merger  
4 or the time of the conversion or?

5 Q. Any time.

6 A. Wasn't until basically the  
7 last few years that I had enough  
8 information to really know that it  
9 appeared to be a big difference  
10 between the two plans.

11 Q. Now, when you say between  
12 the two plans I assume you mean  
13 between the cash balance plan and the  
14 previous plan.

15 A. That's correct.

16 Q. What information did you  
17 get that led you to believe there was  
18 a big difference between the two?

19 A. Comments from colleagues  
20 and employees that were retiring that  
21 got both numbers.

22 Q. Were those people that were  
23 grandfathered with the old plan?

24 A. They were, yes.

1 room.)

2 BY MR. BASSMAN:

3 Q. You mentioned Mr. Rehr and  
4 Mr. Baldwin. Do you remember when  
5 you spoke to Mr. Rehr?

6 A. Two or three years ago.

7 Q. And when he was retiring,  
8 was he 65 years old or younger?

9 A. 55. Or thereabouts. I  
10 don't know exactly.

11 Q. I think you mentioned  
12 earlier that the old Atlantic City  
13 plan had an early retirement option  
14 when you're 55; is that right?

15 A. That's correct.

16 Q. So Mr. Rehr was retiring  
17 under that option?

18 A. That's correct.

19 Q. And Mr. Baldwin, when do  
20 you remember speaking to him?

21 A. Approximately a year ago,  
22 little more.

23 Q. And when he was retiring,  
24 how old was he?

Page 39

Page 41

1 Q. Do you remember any  
2 particular names of who you spoke to?

3 A. Tom Rehr, Joe Baldwin.  
4 There was a number of employees.  
5 There are two names that come to  
6 mind.

7 Q. Okay. If you think of any  
8 as we go on today, feel free to just  
9 let me know.

10 A. Okay.

11 Q. And again, by the way, if  
12 any of these questions we ask -- and  
13 sometimes it happens I ask you a  
14 question and then, you know, two  
15 hours later a light bulb goes off and  
16 you realize there's something else  
17 you want to say.

18 At any time today if you  
19 like, you can add to, amend, change  
20 your answer to any question. I mean  
21 this isn't a game of gotcha. We're  
22 just here to find out what you know.

23 A. Okay.

24 (Ms. Hoffman entered the

1 A. Upper 50s. I don't know  
2 exactly.

3 Q. Under 65?

4 A. That's correct.

5 Q. So was he also taking  
6 advantage of the early retirement  
7 benefit under the old plan?

8 A. Yes.

9 Q. And when you talked to Mr.  
10 Rehr and Mr. Baldwin about the  
11 differences between the two plans,  
12 what information specifically did  
13 they give you?

14 A. I didn't get their exact  
15 numbers. Just the comments that  
16 there was a huge difference between  
17 the cash balance and the ACE plan.

18 Q. I assume when you say huge  
19 difference, the old plan was better  
20 than the cash balance plan for them?

21 A. Yes.

22 Q. And by better I mean it  
23 gave them a higher payment?

24 A. Yes.

Page 42

Page 44

1 Q. And did you ask them for  
2 any details about this difference?  
3 A. I didn't get specifics, no  
4 exact numbers or anything.  
5 Q. And they did not show you  
6 any documents or anything like that?  
7 A. No.  
8 Q. And as far as you know,  
9 those two benefit calculations were  
10 computed for them to retire at age 55  
11 or in their late 50s, right?  
12 A. Yes.  
13 Q. Those weren't numbers as if  
14 they were retiring at age 65?  
15 A. No, not to my knowledge.  
16 Q. As far as you know?  
17 A. As far as I know.  
18 Q. As far as you know, they  
19 were not age 65 numbers?  
20 A. That's correct.  
21 Q. Before you spoke to Mr.  
22 Rehr, did you have any suspicions  
23 that your rights were being violated  
24 by the cash balance plan?

1 consulted a lawyer about the cash  
2 balance plan? Again, all I want from  
3 this is a date.  
4 I want to just let you  
5 know, and I'm sure your counsel will  
6 agree, neither of us want you talking  
7 about the substance of anything you  
8 said to a lawyer.  
9 But just when was the first  
10 time you went to a lawyer about the  
11 cash balance plan?  
12 A. It was the summer of 2005.  
13 Q. And again, for this  
14 question I just want a name. Who did  
15 you go to see?  
16 A. I didn't go to -- Mike  
17 Charles asked me if I would be  
18 involved and contact our law firm.  
19 Q. The Chimicles law firm?  
20 A. That's correct.  
21 Q. Before you contacted the  
22 Chimicles firm, had Mr. Charles told  
23 you anything about his discussions  
24 with them?

Page 43

Page 45

1 A. I didn't really have enough  
2 information to know or -- because I  
3 didn't really know what my numbers  
4 were going to be.  
5 Q. When Conectiv converted to  
6 a cash balance plan were you worried?  
7 A. When Conectiv converted to  
8 the cash balance plan, there was so  
9 much turmoil going on in the company  
10 that the retirement plan wasn't on  
11 the top of my -- we had to rebid our  
12 jobs, we shut down departments, I  
13 moved the operations to Delaware,  
14 moved buildings. So no, it wasn't,  
15 you know...  
16 Q. Now, you mentioned you  
17 heard about the IBM cash balance suit  
18 in mid, late 2004. Was that before  
19 or after you spoke to Mr. Rehr as  
20 best you can recall?  
21 A. It was all at about the  
22 same time frame. So I don't know if  
23 it was before or after.  
24 Q. When was the first time you

1 A. Yes. Some discussions.  
2 Q. And just for the  
3 discussions before you got in touch  
4 with Chimicles, what did Mr. Charles  
5 tell you?  
6 A. Basically that he spoke  
7 with this law firm and asked if I  
8 would like to get involved and asked  
9 me to contact Mr. Malone for more  
10 information.  
11 Q. And when you say get  
12 involved, did he explain get involved  
13 with what?  
14 A. Just stated that they would  
15 like to have more than one person as  
16 part of the Complaint.  
17 Q. Did you ask why they wanted  
18 more than one person?  
19 A. I think he explained. In  
20 case he got hit by a bus, but...  
21 Q. And when did you have this  
22 conversation with Mr. Charles?  
23 A. Summer of 2005.  
24 Q. So shortly after that

Page 46

Page 48

1 conversation you called up Chemicles  
2 and made an appointment?

3 A. I basically just spoke with  
4 them on the phone.

5 Q. And before that  
6 conversation, had Mr. Charles  
7 indicated to you in any way that he  
8 felt his rights were being violated  
9 under the cash balance plan?

10 A. Yes. He expressed -- at  
11 that time he expressed that. Yes.

12 Q. Do you remember the first  
13 time he told you that?

14 A. No, I don't.

15 Q. Would it have been at least  
16 five years ago?

17 A. No.

18 Q. Within the last three years  
19 or so?

20 A. Within the last three years  
21 I would say.

22 Q. And prior to speaking to  
23 Mr. Charles, did you have any  
24 intention yourself to find a lawyer?

1 Q. In your own words, what is  
2 the Vanguard Estimator?

3 A. It's a tool on the Vanguard  
4 website which enables us to calculate  
5 out our retirement benefit.

6 Q. And if you could just give  
7 me a little bit more detail. How do  
8 you use that tool? Walk me through  
9 it step by step.

10 A. It's an online screen that  
11 you can put in when you would like to  
12 retire and it calculates what your  
13 benefit would be.

14 Q. Okay. And you're allowed  
15 to put in whatever retirement date  
16 you want this to assume, right?

17 A. That's correct.

18 Q. And when you say it gives  
19 you your benefit, does it give you a  
20 lump sum, an annuity, both, as best  
21 you remember?

22 A. Both.

23 Q. I assume both you and Mr.  
24 Fink, by the way, were running

Page 47

Page 49

1 A. I didn't actively pursue  
2 anything. I didn't really think out  
3 that far.

4 Q. Did you speak to Mr. Fink  
5 at all about seeing a lawyer?

6 A. Yes.

7 Q. When?

8 A. Right after I talked to Mr.  
9 Malone.

10 Q. Okay. So you contacted Mr.  
11 Fink and referred Mr. Malone to him?

12 A. Yes, that's correct.

13 Q. Okay. Before you referred  
14 Mr. Malone to Mr. Fink, had Mr. Fink  
15 expressed any dissatisfaction to you  
16 about the cash balance plan?

17 A. We had discussions about  
18 it, yes.

19 Q. All right. Could you  
20 describe sort of generally the  
21 substance of those discussions?

22 A. Just around our, the  
23 Vanguard Estimator, Pension  
24 Estimator.

1 numbers on the Vanguard Estimator?

2 A. I know I did and I know  
3 Joe -- he mentioned that he ran some,  
4 so I assume he did.

5 Q. Why were you running  
6 numbers on the Vanguard Estimator?

7 A. I wanted to see what my  
8 cash balance numbers would be based  
9 on the discussions I had with Mr.  
10 Rehr.

11 Q. Okay. So you spoke to Mr.  
12 Rehr, got a little suspicious, and  
13 decided to run some numbers?

14 A. That's correct.

15 (Exhibit D-21 was marked  
16 for identification.)

17 BY MR. BASSMAN:

18 Q. Mr. Ward, I'm giving you a  
19 document we just marked Defendant's  
20 Exhibit 21.

21 We got this document from  
22 your counsel, and as I understand the  
23 page numbering conventions your  
24 counsel uses, if you look at the

Page 50

Page 52

1 bottom right-hand corner it says MWW,  
2 and it's our understanding these are  
3 documents that you gave your lawyer?

4 A. Yes.

5 Q. Take a moment just to look  
6 over Defendant's 21.

7 Have you had an opportunity  
8 to take a look at Defendant's 21?

9 A. Yes.

10 Q. And is this a printout of  
11 the Pension Estimator calculations  
12 you were just describing?

13 A. Yes.

14 Q. And I notice these go back  
15 to September 1, 2004 if you look on  
16 the second page; is that right?

17 A. Yes.

18 Q. Did you do any Pension  
19 Estimator calculations before then?

20 A. No.

21 Q. Had you heard of the  
22 Pension Estimator before that?

23 Let me rephrase. Did you  
24 know if this tool existed before

1 as soon as I found out about it I  
2 registered. So there might have been  
3 a week or two or month or whatever it  
4 is, but...

5 Q. How did you find out about  
6 it?

7 A. Through somebody at work,  
8 and I don't recall who it was.

9 Q. Was it someone at HR?

10 A. No. It was one of my  
11 fellow employees, but I don't  
12 remember who it was.

13 Q. And do you remember how the  
14 Pension Estimator came up in  
15 conversation?

16 A. During the discussions with  
17 the other employees about the  
18 numbers, the retirees, recent  
19 retirees were getting and, you know,  
20 just asking how did you find out what  
21 your numbers are going to be.

22 Oh, there's a Pension  
23 Estimator out on the Vanguard  
24 website.

Page 51

Page 53

1 September 1, 2004?

2 A. Sometime probably in the  
3 August time frame, I'm not -- it took  
4 me time to get a user ID and all to  
5 be able to do it. So I would say  
6 about that time is when I found out.

7 Q. So did you need to request  
8 a specific user ID to use the Pension  
9 Estimator?

10 A. Had to go on and register  
11 with Vanguard online.

12 Q. And how long did that  
13 process take to get a user ID?

14 A. I don't recall, but I think  
15 it's just days. So...

16 Q. Less than a month?

17 A. Yes. Yes.

18 Q. Less than a week?

19 A. Probably, yes.

20 Q. Before you got your user  
21 name, were you aware that the Pension  
22 Estimator existed, that this was  
23 something you could access?

24 A. I would say yes, but not --

1 Q. Do you remember who told  
2 you that?

3 A. No, I don't.

4 Q. Do you remember sort of  
5 generally who was part of these  
6 conversations?

7 A. General office discussion.  
8 So it's probably somebody in my  
9 department, but I don't recall who.

10 Q. How many people are in your  
11 department?

12 A. In electric maintenance  
13 there's 60 or 70 people maybe.

14 Q. Okay. First estimate you  
15 did was September 1, 2004.

16 A. Yes.

17 Q. And you testified earlier  
18 that you started running calculations  
19 in the Pension Estimator after you  
20 spoke to Mr. Rehr; is that right?

21 A. Yes, I think he was the  
22 one.

23 Q. Looking at page two of this  
24 exhibit, the 9/1/2004, does that

Page 54

Page 56

1 refresh your recollection in any way  
2 as to the precise date that you spoke  
3 to Mr. Rehr?

4 A. No, it doesn't.

5 Q. Does it help you  
6 approximate the date you spoke to  
7 him?

8 A. Probably within a month of  
9 that time frame give or take. I  
10 don't -- I can't come up with an  
11 exact date for you.

12 Q. Okay. That's fine. I  
13 notice looking at this that the days  
14 that you seem to have run  
15 calculations go in clusters.

16 For instance, if you take a  
17 look on page two, you ran two on  
18 September 1, 2004; then you ran  
19 several on November 5th, 2004, and  
20 then several on November 18th. Do  
21 you see that?

22 A. Yes.

23 Q. Is there any particular  
24 reason that you were running Pension

1 ever ran?

2 A. To the best of my  
3 knowledge, yes. I don't know how to  
4 delete them, so...

5 Q. Did you ever try to delete  
6 them?

7 A. No.

8 Q. When you say you don't know  
9 how to delete them, are these stored  
10 electronically in your account on  
11 Vanguard?

12 A. That's correct.

13 Q. So you could generate these  
14 just by going on your account and  
15 printing them all off?

16 A. That's how I got these.

17 Q. Okay. I believe the status  
18 field looks like it's redacted, and I  
19 don't want you to tell me what was in  
20 it right now specifically, but what's  
21 the subject matter of what goes in  
22 the status field?

23 A. I don't know. I don't  
24 remember.

Page 55

Page 57

1 Estimator calculations on the dates  
2 indicated on these first two pages?

3 A. Just to get values for  
4 different retirement dates, 55, 57,  
5 58, 60, you know.

6 Q. My question is actually a  
7 little different. For instance, was  
8 there any reason why on November 5th,  
9 2004 you were running these  
10 calculations as opposed to doing it  
11 two weeks later or earlier?

12 A. No. No particular reason.

13 Q. If you look, just take a  
14 look through these dates starting  
15 from the top at 12/22/06 and going  
16 down to 9/1/04, do you remember, you  
17 know, any discussions around the  
18 times that you made these  
19 calculations about the cash balance  
20 plan?

21 A. Not particularly, no.

22 Q. By the way, is Defendant's  
23 Exhibit 21 a complete set of all the  
24 Pension Estimator calculations you

1 Q. Is it something that you  
2 would write?

3 A. I don't think so. I don't,  
4 I don't know. I've never entered  
5 anything in there, so...

6 Q. I guess my next question  
7 for you is, what was in the status  
8 field that's been redacted?

9 MR. SAUDER: Just for the  
10 record, I don't know that anything  
11 was redacted from this document.

12 MR. BASSMAN: Oh, okay. I  
13 just noticed it was blank, and I  
14 remember seeing a set of e-mail  
15 traffic that there had been  
16 redactions on this document.

17 MR. SAUDER: There were  
18 redactions with regard to Mike  
19 Charles but there were calculations  
20 that he ran based on our request, and  
21 that was what was redacted.

22 I don't know that anything  
23 was redacted from the status field of  
24 these documents.

Page 58

Page 60

1 BY MR. BASSMAN:  
 2 Q. Okay. With that  
 3 correction, do you remember if  
 4 anything was in the status fields?  
 5 A. No, I don't.  
 6 Q. Okay. I see you ran two  
 7 estimates on December 22nd, 2006. Do  
 8 you see that?  
 9 A. Yes.  
 10 Q. Why were you running  
 11 estimates on December 22nd?  
 12 A. I don't remember. I just  
 13 wanted to get updated numbers. If  
 14 you look through -- maybe to explain  
 15 it.  
 16 Each of the documents  
 17 it's -- it doesn't give you a lot of  
 18 information on what I requested at  
 19 that time. So the estimated years of  
 20 service come out zero and zero.  
 21 Q. Uh-huh.  
 22 A. So a lot of the old  
 23 documents I don't remember.  
 24 At the time I would have,

1 meetings.  
 2 Q. Okay. Do you remember  
 3 receiving any documents about the  
 4 cash balance plan conversion?  
 5 A. I do remember receiving  
 6 some generic documents.  
 7 Q. Did you read them?  
 8 A. Yes.  
 9 Q. When Conectiv makes -- I  
 10 assume from time to time Conectiv  
 11 makes documents available to  
 12 employees about the pension plan.  
 13 A. That's correct.  
 14 Q. And it also sends you  
 15 documents on the plan as well, right?  
 16 A. Periodically, yes.  
 17 Q. And do you read those  
 18 documents?  
 19 A. I don't, I don't read them  
 20 all in full.  
 21 Q. Do you believe that your  
 22 pension rights are important?  
 23 A. Yes.  
 24 Q. And that the amount of your

Page 59

Page 61

1 because I hit the buttons, because  
 2 you put the year you want to collect  
 3 your money and the year you want to  
 4 retire and they can be different and  
 5 it would give you a different number.  
 6 So I was just checking the  
 7 Pension Estimator at that time.  
 8 Q. You can put this aside.  
 9 Put it sort of in the middle of the  
 10 table would be good.  
 11 You mentioned that in '98  
 12 there were a couple of initial  
 13 meetings about the cash balance plan.  
 14 A. That's correct.  
 15 Q. Did you attend any meetings  
 16 in 1999 about the cash balance plan?  
 17 A. I don't remember. I know I  
 18 attended one or two meetings. I know  
 19 the first one I think was at the end  
 20 of '98; the second one could have  
 21 been in early '99, but...  
 22 Q. Okay. You specifically  
 23 remember there were two meetings.  
 24 A. I think I attended two

1 pension is important for your  
 2 personal financial planning, right?  
 3 A. Yes.  
 4 Q. Given the importance of the  
 5 pension for your personal financial  
 6 planning, do you try to pay  
 7 particular attention to  
 8 communications about your rights  
 9 under your pension plan?  
 10 A. I do now.  
 11 Q. When did you start?  
 12 A. Around 2004.  
 13 Q. And before then?  
 14 A. Not really, no.  
 15 Q. We've been going by the way  
 16 for about an hour. So I just wanted  
 17 to see, I'm about to segue into going  
 18 through a number of documents. So I  
 19 just wanted to see how you're doing,  
 20 if you need a break, or you want to  
 21 keep going.  
 22 MR. SAUDER: You want to  
 23 take a break? It's up to you.  
 24 THE WITNESS: I'm fine.



Page 62

Page 64

1 MR. BASSMAN: Let's keep  
2 going.

3 THE WITNESS: You okay?  
4 BY MR. BASSMAN:

5 Q. The more we go, the sooner  
6 you're out of here.

7 A. Okay. That's fine.

8 Q. I want you to take a look  
9 at a document that was marked  
10 yesterday as Defendant's Exhibit 1.

11 Have you had an opportunity  
12 to look over Defendant's 1?

13 A. Yes.

14 Q. Ever seen this document  
15 before?

16 A. Don't remember seeing it,  
17 no.

18 Q. Have you ever seen any  
19 other documents titled Conectiv  
20 EMerging Times?

21 A. I don't recall it.

22 Q. If I could direct your  
23 attention to, on the first page in  
24 the far right you see that there's a

1 Exhibit 2, which is another issue of  
2 EMerging Times. Take a look over  
3 that.

4 A. Okay.

5 Q. Have you had a chance to  
6 look over Defendant's 2?

7 A. Yes.

8 Q. Before we go there, have  
9 you ever seen this document before?

10 A. I don't remember seeing it.

11 Q. And again, you don't  
12 remember ever seeing any documents in  
13 the format of EMerging Times or a  
14 publication like that?

15 A. I may have. I don't  
16 remember, though, specifically.

17 Q. Turn to the second page.  
18 And if you see, there's another one  
19 of these back and forths and look on  
20 the left-hand column. You see ET  
21 starts saying, Can you tell us more  
22 about the pension arrangement. Do  
23 you see that?

24 A. Yes.

Page 63

Page 65

1 little Q and A on the bottom that  
2 begins ET, How does the program do  
3 that. Do you see that?

4 A. Yes, I do.

5 Q. If you could just read to  
6 yourself the BW response to the end  
7 of the page. Just that paragraph.

8 Have you had a chance to  
9 read that paragraph?

10 A. Yes, I have.

11 Q. In the paragraph that you  
12 just read sitting here today, do you  
13 believe that any of the statements in  
14 it were inaccurate? And again, just  
15 as far as you know.

16 A. As -- yeah. I don't know  
17 if we -- if Conectiv enacted all  
18 these things that they spoke about.  
19 No, I don't know of anything that's  
20 really inaccurate with this.

21 Q. Okay. You can put that  
22 back in the big pile.

23 Let's take a look at what  
24 was previously marked as Defendant's

1 MR. SAUDER: Just  
2 indicating for the record it's PHI  
3 3362.

4 BY MR. BASSMAN:

5 Q. Could you just read to  
6 yourself the Q and A starting with  
7 that question to the end of BW's  
8 answer?

9 A. Okay.

10 Q. Have you had a chance to  
11 review that Q and A?

12 A. Yes.

13 Q. And again, just to the best  
14 of your knowledge and understanding,  
15 is there anything in the Q and A that  
16 is inaccurate?

17 A. No, I don't think so.

18 Q. Okay.

19 MR. SAUDER: Again, we're  
20 only talking about the one paragraph  
21 which starts the question, Can you  
22 tell us more about the new pension  
23 arrangement?

24 MR. BASSMAN: Yes. Just

Page 66

Page 68

1 the paragraph that comes right after  
 2 that.  
 3 BY MR. BASSMAN:  
 4 Q. The next one is Defendant's  
 5 Exhibit, what's marked as Defendant's  
 6 Exhibit 3. If you could take a look  
 7 over Defendant's 3.  
 8 Have you had an opportunity  
 9 to look over Exhibit 3?  
 10 A. Yes.  
 11 Q. Have you ever seen this  
 12 document before?  
 13 A. I think I have, yes.  
 14 Q. When did you see it?  
 15 A. I don't remember. I don't  
 16 know if it's -- if I saw it when it  
 17 came out or if I saw it a year and a  
 18 half ago when I compiled documents.  
 19 I'm not really sure.  
 20 Q. You say a year and a half  
 21 when you compiled documents. Why  
 22 were you compiling documents a year  
 23 and a half ago?  
 24 A. When we spoke to Mr. Malone

1 meetings that may have occurred with  
 2 you and Mr. Charles and Mr. Fink and  
 3 your counsel.  
 4 A. Uh-huh.  
 5 Q. I mean discussions outside  
 6 the presence of your lawyer.  
 7 A. I mean a number of  
 8 employees. Give some names. I mean,  
 9 I don't remember everybody.  
 10 Q. Give me who you got.  
 11 A. Okay. I got information  
 12 from Fred Rose, Elsie McHenry.  
 13 Q. How do you spell that?  
 14 A. M-C-H-E-N-R-Y I think it  
 15 is.  
 16 Q. And the first name was?  
 17 A. Elsie, E-L-S-I-E. There  
 18 were a number of other employees, and  
 19 I don't remember their names.  
 20 Q. Again, as I said earlier,  
 21 if anybody else's name pops into your  
 22 head later on just let me know.  
 23 A. Okay.  
 24 Q. What does Mr. Rose do at

Page 67

Page 69

1 he asked what do we have in reference  
 2 to the cash balance plan and to send  
 3 him everything he had, and if we knew  
 4 anybody else that might have any  
 5 documentation, too.  
 6 So you know, once, once  
 7 the -- we filed the Complaint, a lot  
 8 of employees gave us a lot of  
 9 information. So I may have saw it  
 10 then. I don't remember.  
 11 Q. When you say employees were  
 12 giving you information, was that in  
 13 response to you asking them for  
 14 information or did they voluntarily  
 15 give it to you?  
 16 A. Some, both.  
 17 Q. Have you talked about this  
 18 lawsuit with other employees at  
 19 Conectiv?  
 20 A. To some extent.  
 21 Q. Who have you spoken to?  
 22 And again, just when I ask you this  
 23 question I just want to be clear, I'm  
 24 not asking about any, you know,

1 Conectiv?  
 2 A. He's an engineer in  
 3 electric maintenance.  
 4 Q. Does he work in the same  
 5 department as you?  
 6 A. Same, same section, yes.  
 7 Q. And what does Ms. McHenry  
 8 do?  
 9 A. She works in New Castle as  
 10 an analyst.  
 11 Q. What does she analyze?  
 12 A. I don't know what she  
 13 really does right now. But I used to  
 14 work with her for years in the meter  
 15 department. That's how I know her.  
 16 Q. New Castle, is that  
 17 headquarters?  
 18 A. One of our headquarters.  
 19 That's our New Castle regional  
 20 office.  
 21 Q. And do you remember what  
 22 kind of information Mr. Rose gave  
 23 you?  
 24 A. No, I don't. I just know

Page 70

Page 72

1 it was a lot of documents.

2 Q. And do you remember what  
3 information Ms. McHenry gave you?

4 A. Same thing. I don't have  
5 any specifics. I didn't keep a log  
6 of who gave me what, so I don't  
7 really know.

8 Q. You do remember that both  
9 of them gave you documents, though.

10 A. Yes, I do.

11 Q. And did they give you hard  
12 copy documents or did they forward  
13 things by e-mail?

14 A. Hard copy documents.

15 Q. Did they give you any  
16 information on top of what was in the  
17 documents?

18 A. No.

19 Q. And did you call both Mr.  
20 Rose and Ms. McHenry to ask them if  
21 they had any documents?

22 A. I don't recall how I got  
23 the information from them, if I asked  
24 them or if they just asked me if I

1 fourth page of this exhibit, which  
2 has the Bates number -- and those are  
3 the little numbers in the corner that  
4 lawyers put on them. JMC 447.

5 A. Yes.

6 Q. Do you see there's some  
7 handwriting on this page?

8 A. Yes.

9 Q. Do you recognize the  
10 handwriting?

11 A. No, I don't.

12 Q. You can put this one to the  
13 side.

14 A. (Witness complies.)

15 Q. Okay. Number 4 now. I ask  
16 you to take a look at what's  
17 previously been marked Defendant's  
18 Exhibit 4. If you could just take a  
19 look over that.

20 A. Okay.

21 Q. Have you had a chance to  
22 look over Defendant's 4?

23 A. Yes.

24 Q. Have you ever -- well,

Page 71

Page 73

1 needed anything.

2 Q. Has anyone, any other  
3 employee at Conectiv, asked you about  
4 the status of this lawsuit?

5 A. Probably the majority of  
6 the people in the Atlantic region.  
7 Yes, a large number of people.

8 Q. And what have you told  
9 them?

10 A. To check the website.

11 Q. Check the Chimicles firm's  
12 website?

13 A. That's correct.

14 Q. Have you ever provided any  
15 more detail than that?

16 A. I don't remember specifics.  
17 Maybe comments, that it's going okay  
18 or just generic information.

19 Q. Anybody ever ask you  
20 whether you thought you had a strong  
21 or a weak case?

22 A. They have, and I couldn't  
23 give them a response, so...

24 Q. If you could turn to the

1 first let me ask you, have you seen  
2 this document before?

3 A. I don't remember seeing it,  
4 no.

5 Q. Have you seen documents in  
6 this format with the fax heading on  
7 it?

8 A. Yes, I have.

9 Q. And in what context have  
10 you seen them?

11 A. Around the office  
12 they're -- and I can't remember how  
13 often we got them. They might have  
14 been weekly at the time or monthly or  
15 some, some periodic cycle we would  
16 get information.

17 Q. And so on some periodic  
18 basis management at Conectiv would  
19 send to your internal mailbox a  
20 document like this titled facts,  
21 F-A-C-T-S?

22 A. I'm not sure how we got  
23 them. Whether it went to a mailbox  
24 or just somebody handed them out or

Page 74

Page 76

1 they sat on a table somewhere, but  
2 they were around the office.

3 Q. And they were available?

4 A. Yes.

5 Q. Do you remember always  
6 reading each issue of facts?

7 A. No.

8 Q. Why didn't you read them  
9 all?

10 A. Can't answer that.

11 Q. In hindsight do you think  
12 you should have?

13 A. There was a lot of stuff  
14 going on then, and like I said  
15 before, we were bidding our jobs, we  
16 were closing departments.

17 You know, there was a lot  
18 of stuff that was being finalized,  
19 but the compensation package and  
20 benefit package that just wasn't as  
21 important -- maybe it should have  
22 been, but...

23 Q. Well, with full 20/20  
24 hindsight, do you wish that you had

1 A. I don't recall, no.

2 Q. Did you take any notes?

3 A. I don't remember taking  
4 any, no. It was just general  
5 information.

6 Q. Were there any documents  
7 passed out at those meetings?

8 A. I don't remember.

9 Q. Looking at Defendant's  
10 Exhibit 4, there's a heading that  
11 begins -- you see New Cash Balance  
12 Plan towards the bottom of the first  
13 page?

14 A. Yes.

15 Q. From the text that begins  
16 under that heading Until Now, do you  
17 see that?

18 A. Yes.

19 Q. From Until Now to the end  
20 of this document, do you see any  
21 representations that you believe are  
22 inaccurate?

23 A. No. I don't see anything  
24 inaccurate.

Page 75

Page 77

1 paid more attention to communications  
2 about compensation and benefit issues  
3 back in 1998 and 1999?

4 A. Yes.

5 Q. Do you feel that there was  
6 information out there that you could  
7 have accessed at the time that you  
8 didn't?

9 A. There could have been more  
10 information than I did look for, yes.  
11 I'm sure there was.

12 Q. And I assume in 1998 and  
13 1999 you weren't trying to uncover  
14 information about the compensation  
15 and benefit package, right?

16 A. That's correct.

17 Q. You never, as far as you  
18 can recall, you never called anyone  
19 at HR and asked any questions about  
20 it?

21 A. No. Not that I recall, no.

22 Q. When you attended these two  
23 meetings, did you ask any questions  
24 of the presenter?

1 Q. I just noticed you were  
2 glancing at the first page. If you  
3 could also take a look at the back  
4 two pages. Just make sure that you  
5 don't see anything inaccurate in them  
6 either.

7 A. I don't see anything  
8 inaccurate that I can see.

9 Q. Okay, thanks. You can put  
10 that one to the side in the done  
11 pile.

12 Let's skip ahead to  
13 Defendant's Exhibit 6. If you could  
14 take a look over that.

15 A. Okay.

16 Q. Have you had an opportunity  
17 to review Exhibit 6?

18 A. Yes.

19 Q. Have you ever seen this  
20 document before?

21 A. Yes.

22 Q. And did you receive a copy  
23 on or about December 21, 1998?

24 A. I don't remember. Again, I

Page 78

Page 80

1 don't remember when I saw it. It  
2 could have been a year and a half ago  
3 or could have been in 1998. I don't  
4 remember.

5 Q. Do you have any reason to  
6 believe you didn't receive a copy of  
7 what's been marked as Defendant's 6  
8 in December of '98?

9 A. No.

10 Q. In December of '98, do you  
11 believe you would have been a  
12 Conectiv management employee?

13 A. Yes.

14 Q. When you looked over this  
15 document just now, Defendant's  
16 Exhibit 6, did you see any  
17 representations that you believe are  
18 inaccurate?

19 MR. SAUDER: Objection to  
20 form. You can answer.

21 THE WITNESS: Huh?

22 MR. SAUDER: You can  
23 answer.

24 THE WITNESS: Oh. No.

1 Q. You mentioned that there  
2 are Your Conectiv Total Rewards  
3 publications that are handed out or  
4 given. Do you read each one that's  
5 handed out or given?

6 A. No. I don't know if I've  
7 read them all.

8 Q. Do you make an effort to  
9 read them all?

10 A. I would glance over them.

11 Not word for word probably.

12 Q. Why don't you read them all  
13 word for word?

14 A. Don't know. Can't answer  
15 that.

16 Q. Sitting here with perfect  
17 hindsight today, January 2007, do you  
18 wish that you had read them all word  
19 for word?

20 A. Yes.

21 Q. Would you have acted  
22 differently if you read them all word  
23 for word in 1998 and 1999?

24 MR. SAUDER: Objection to

Page 79

Page 81

1 BY MR. BASSMAN:

2 Q. Put this one to the side.  
3 Let's take a look at  
4 Defendant's Exhibit 7. If you could  
5 take a look over that one.

6 A. Okay.

7 Q. Have you had a chance to  
8 look over Defendant's 7?

9 A. Yes.

10 Q. Have you ever seen this  
11 document before?

12 A. Again, yes, I have, but I  
13 don't know when.

14 Q. Have you ever seen  
15 documents before with the title Your  
16 Conectiv Total Rewards?

17 A. Yes.

18 Q. In what context?

19 A. I might be confusing  
20 that -- I think it's the Conectiv  
21 Totals Rewards we get -- I think in  
22 Atlantic City Electric also Total  
23 Rewards as a publication handed out  
24 or given.

1 form.

2 BY MR. BASSMAN:

3 Q. You can answer.

4 A. I don't think so.

5 Q. In your review of  
6 Defendant's 7, did you see any  
7 representations that you believe are  
8 inaccurate?

9 MR. SAUDER: Objection to  
10 form.

11 THE WITNESS: The --

12 BY MR. BASSMAN:

13 Q. Feel free to take another  
14 look if you want to.

15 A. Okay. The, the charts and  
16 the graphs and the what if and the  
17 person making this amount of money  
18 over this many years, I don't know  
19 how accurate that is I mean, but as  
20 far as -- and that goes with all the  
21 other documents and saying I could  
22 correct something.

23 I can't -- I have no way to  
24 validate that these charts and graphs

Page 82

Page 84

1 are correct or that the, you know,  
 2 the examples that they've used are  
 3 correct, but the concept of what's  
 4 being said I don't see anything as  
 5 being inaccurate.  
 6 Q. Okay.  
 7 MR. SAUDER: Before we go  
 8 on, I just note that this seems to be  
 9 a partial document, that the first  
 10 numbered page which is Bates JMC 192  
 11 starts on page 24.  
 12 MR. BASSMAN: Okay.  
 13 BY MR. BASSMAN:  
 14 Q. And again, just so we're  
 15 clear, when I'm referring to if  
 16 there's anything in the document,  
 17 just so the record is clear, I just  
 18 mean the exhibit, what was just shown  
 19 to you, just those pages, that  
 20 physical set.  
 21 A. Okay.  
 22 Q. You mentioned earlier that  
 23 you had been friends with Mr. Charles  
 24 for over 20 years; is that right?

1 you wrote letters, but communicate  
 2 with Mr. Charles back in 1998 and  
 3 1999?  
 4 A. Not very often.  
 5 Q. More than once a year?  
 6 A. It could have been, but I  
 7 don't recall. It wasn't on a regular  
 8 basis.  
 9 Q. Did you communicate with  
 10 him at all in '98 and '99?  
 11 A. I can't say I did. I don't  
 12 remember.  
 13 Q. When Mr. Charles first  
 14 spoke to you about contacting the  
 15 Chimicles firm, did he mention to you  
 16 whether he had spoken to other  
 17 employees about contacting the  
 18 Chimicles firm?  
 19 A. I don't recall. He may  
 20 have, but I don't recall.  
 21 Q. Did you speak to any  
 22 employees other than Mr. Fink about  
 23 contacting the Chimicles firm?  
 24 A. I spoke with Mr. Rose, Fred

Page 83

Page 85

1 A. Yes.  
 2 Q. Do you speak with Mr.  
 3 Charles regularly?  
 4 A. Not on a regular basis, no.  
 5 Q. How often do you speak with  
 6 him?  
 7 A. I'd say periodically  
 8 because we, we work together still on  
 9 projects.  
 10 Q. How often do you think you  
 11 spoke with him around 1998 and 1999?  
 12 A. I can't, can't recall. Not  
 13 very often.  
 14 Q. Do you speak with him more  
 15 often now than you did in 1998 and  
 16 1999?  
 17 A. Yes.  
 18 Q. How come?  
 19 A. We work together a lot  
 20 closer on projects now.  
 21 Q. Let me actually broaden the  
 22 question a little. How often did you  
 23 communicate, by that I mean not just  
 24 speak but, you know, e-mail, write if

1 Rose.  
 2 Q. And when did you speak to  
 3 him?  
 4 A. In the August, September  
 5 time frame. Summer of 2005.  
 6 Q. When you say you spoke with  
 7 him, was this an in-person  
 8 conversation?  
 9 A. That's correct.  
 10 Q. And who initiated the  
 11 conversation?  
 12 A. I did.  
 13 Q. Why did you initiate this  
 14 conversation?  
 15 A. To see if he would like to  
 16 be involved, if he would like to  
 17 contact Mr. Malone to be involved in  
 18 the Complaint.  
 19 Q. And why did you approach  
 20 Mr. Rose in particular to talk about  
 21 this Complaint?  
 22 A. Because he was also a non  
 23 grandfathered employee like myself  
 24 with a similar situation.



Page 86

Page 88

1 Q. Had Mr. Rose complained to  
2 you at all about the cash balance  
3 plan?

4 A. About that time, yes.

5 Q. And before this  
6 conversation about going to the  
7 Chimicles firm?

8 A. Shortly before that, yes.

9 Q. Do you remember what the  
10 substance of his complaint about the  
11 cash balance plan was?

12 A. No, I don't.

13 Q. In this conversation about  
14 when you asked Mr. Rose if he would  
15 be interested in signing on as a  
16 plaintiff in this lawsuit, what do  
17 you remember saying to him?

18 A. Basically just asked him if  
19 he would like to get involved in, in  
20 this action.

21 Q. Did you tell him anything  
22 about the case?

23 A. Just a little bit of  
24 information that I had.

1 A. Not particularly.

2 Q. Were you concerned?

3 A. Absolutely.

4 Q. And why is that?

5 A. I'm filing a suit against  
6 my employer. It just makes me  
7 uncomfortable.

8 Q. But your employer to date  
9 hasn't done anything in retaliation  
10 for this lawsuit, right?

11 A. No. That's correct.

12 Q. Let's take a look at Number  
13 8. If you could take a look over  
14 what's been marked as Defendant's 8.

15 A. Okay.

16 Q. Have you had a chance to  
17 look over Defendant's 8?

18 A. Yes, I have.

19 Q. Ever seen this before?

20 A. Yes, I have, but I don't  
21 know when.

22 Q. So you're not sure if you  
23 saw the document at the time it was  
24 generated or as part of your search

Page 87

Page 89

1 Q. Do you remember what that  
2 information was?

3 A. Just generic information  
4 about the suit.

5 Q. Did he ask you any  
6 questions about the lawsuit?

7 A. I don't recall. I just  
8 know -- I asked him if he was  
9 interested and if he was to contact  
10 Mr. Malone.

11 Q. What did Mr. Rose say to  
12 you during this conversation?

13 A. That he didn't feel  
14 comfortable in doing that.

15 Q. Did you ask him why?

16 A. He didn't -- he just said  
17 he wasn't comfortable.

18 Q. I understand. Did you ask  
19 him why he felt he wasn't  
20 comfortable?

21 A. He was concerned about  
22 losing his employment.

23 Q. Did he give you any reason  
24 why he was concerned?

1 about 18 months ago for documents on  
2 the cash balance plan?

3 MR. SAUDER: Objection with  
4 regard to the time it was generated.  
5 I don't believe this document is  
6 dated.

7 MR. BASSMAN: Okay. I'll  
8 withdraw that. I'll rephrase.  
9 BY MR. BASSMAN:

10 Q. I assume when you say  
11 you're unsure when you saw it, you're  
12 not sure if you saw this in  
13 connection with collecting documents  
14 about 18 months ago for the lawsuit  
15 or if you saw it some other time?

16 A. That's correct.

17 Q. In your review of this  
18 document, did you see any  
19 representations that you believe are  
20 inaccurate?

21 MR. SAUDER: Objection.

22 BY MR. BASSMAN:

23 Q. You can answer.

24 A. Again, with the other

Page 90

Page 92

1 documents, the graphs of the new cash  
2 balance versus our current plan and  
3 where they interact and where they --  
4 I have no way to valid that, that  
5 doesn't look correct, but I --  
6 there's no numbers to go with it to  
7 know, so...

8 Q. When you say something  
9 doesn't look correct, can you show me  
10 which graph you're thinking doesn't  
11 look correct?

12 A. Page seven, Overview of  
13 Cash Balance Pensions.

14 Q. And are you looking at the  
15 graph that has Concept on top and  
16 Dollars on the side?

17 A. That's correct.

18 Q. What looks inaccurate to  
19 you on this graph?

20 MR. SAUDER: Just for the  
21 record, this is Bates 203 on the  
22 document.

23 THE WITNESS: Yes, okay. I  
24 don't know if that's the annuity, if

1 old plan could result in the same  
2 benefit at retirement?

3 MR. SAUDER: I would just  
4 caution the witness to the extent  
5 that it involves any attorney-client  
6 communications that he obviously do  
7 not answer any questions with regard  
8 to attorney-client communications,  
9 but if you can answer the question  
10 aside from anything you've learned  
11 from your attorney, go ahead and  
12 answer.

13 THE WITNESS: Just based on  
14 the -- just based on the calculations  
15 I've made on the Pension Estimator.

16 BY MR. BASSMAN:

17 Q. And Mr. Rehr and Mr.  
18 Baldwin both retired before age 65,  
19 right?

20 A. That's correct.

21 Q. Leaving aside this graph,  
22 is there anything else in Defendant's  
23 8, any other representation that you  
24 believe is inaccurate?

Page 91

Page 93

1 it's the lump sum. Is that our  
2 current AE plan? The DelMarVa plan?  
3 And what's the retirement age date?  
4 I mean --

5 BY MR. BASSMAN:

6 Q. Okay. So it's not that  
7 something strikes you as  
8 affirmatively false in this graph;  
9 it's just that you don't have enough  
10 information to know what's being  
11 represented.

12 A. And this shows the plans  
13 being equal at a retirement date.

14 Q. And you think that's false?

15 A. Yes, I do.

16 Q. And you think that's false  
17 based on your discussions with Mr.  
18 Rehr and Mr. Baldwin?

19 A. That's correct.

20 Q. Besides your discussions  
21 with Mr. Rehr and Mr. Baldwin, any  
22 other basis for thinking that it  
23 would be a false statement to say  
24 that the cash balance plan and the

1 MR. SAUDER: Again, I would  
2 object.

3 THE WITNESS: I don't see  
4 anything, no.

5 MR. BASSMAN: Okay. At  
6 this point, I think you may be a bit  
7 more of a trooper than I am. I want  
8 to take five to stretch my legs, so  
9 let's take a five-minute break.

10 THE WITNESS: Sure.

11 RECESS

12 MR. BASSMAN: Back on the  
13 record.

14 MR. SAUDER: There's an  
15 agreement that Mr. Ward's Vanguard  
16 estimates, which have been marked as  
17 D-21, will be marked as confidential,  
18 and there's also an agreement with  
19 regard to Mr. Fink's Vanguard  
20 estimates that they will also be  
21 marked as confidential.

22 BY MR. BASSMAN:

23 Q. Mr. Ward, before we broke,  
24 you mentioned that you ran a number

Page 94

Page 96

1 of calculations on the Pension  
 2 Estimator and that you did this after  
 3 speaking with Mr. Rehr. Do you  
 4 recall that testimony?  
 5 A. Yes.  
 6 Q. And the reason that you  
 7 wanted to run calculations on the  
 8 Pension Estimator was to compare how  
 9 your benefits under the cash balance  
 10 plan compared to the old plan; is  
 11 that right?  
 12 A. That's correct.  
 13 Q. How did you figure out what  
 14 your benefits were under the old  
 15 plan?  
 16 A. I basically couldn't for  
 17 the lump sum. Had to approximate  
 18 them based on Mr. Rehr's approximate  
 19 numbers he gave me.  
 20 Q. So you just used Mr. Rehr's  
 21 numbers as a proxy for your own?  
 22 A. That's correct. Because we  
 23 make roughly the same amount of money  
 24 with -- would have approximately the

1 A. No, not that I'm aware of.  
 2 Q. Do you know of any other  
 3 Conectiv employee who when they  
 4 retired opted for an annuity instead  
 5 of a lump sum?  
 6 A. No.  
 7 Q. Let's take a look at  
 8 Defendant's Exhibit 9.  
 9 A. Okay.  
 10 Q. Have you ever seen this  
 11 document before?  
 12 A. I don't recall seeing it,  
 13 no.  
 14 Q. Have you ever seen other  
 15 documents titled InSight, a Conectiv  
 16 employee newsletter?  
 17 A. Yes, I have.  
 18 Q. In what context?  
 19 A. I have just seen the  
 20 InSight name. I do remember seeing  
 21 issues. I don't recall what issues,  
 22 but I have seen them.  
 23 Q. Have you ever seen the  
 24 InSight letter delivered to your

Page 95

Page 97

1 same years of service.  
 2 Q. Did Mr. Rehr give you the  
 3 amount -- first off, let me back up  
 4 for a second. Did Mr. Rehr take a  
 5 lump sum or an annuity when he  
 6 retired?  
 7 A. Lump sum.  
 8 Q. And did he tell you the  
 9 amount of the lump sum?  
 10 A. Not the exact amount.  
 11 Q. Did he give you a ballpark  
 12 figure?  
 13 A. He did, yes.  
 14 Q. What was it?  
 15 A. It was in -- I don't recall  
 16 the exact number but it was over  
 17 600,000.  
 18 Q. You mentioned earlier that  
 19 you spoke to several individuals who  
 20 were retiring.  
 21 A. Yes, that's correct.  
 22 Q. Did any of those  
 23 individuals opt for an annuity  
 24 instead of a lump sum?

1 internal mailbox at the company?  
 2 A. I don't recall.  
 3 Q. Have you ever received a  
 4 copy of an InSight newsletter?  
 5 A. An InSight, yes, I have,  
 6 but I don't know how I received it.  
 7 Q. Anything secret about  
 8 what's in an InSight newsletter as  
 9 far as you know?  
 10 MR. SAUDER: Objection.  
 11 BY MR. BASSMAN:  
 12 Q. You can answer.  
 13 A. Anything --  
 14 Q. Secret.  
 15 A. -- secret? Not that I'm  
 16 aware of, no.  
 17 Q. You can put this to the  
 18 side.  
 19 MR. SAUDER: Just noting  
 20 for the record that document starts  
 21 on PHI 3428, the next page is 3426,  
 22 and that's page number 6, so this  
 23 appears to be an incomplete document.  
 24 BY MR. BASSMAN:

Page 98

Page 100

1 Q. Have you ever read any  
2 InSight newsletters?  
3 A. I can't recall what copies  
4 I would have read, but I think I  
5 have, yes.  
6 Q. Do you try to read every  
7 InSight newsletter that you receive?  
8 A. No.  
9 Q. Why not?  
10 A. Just never took the time to  
11 read them.  
12 Q. Let's take a look at  
13 Defendant's 10. Can you take a look  
14 over Defendant's 10?  
15 A. Okay.  
16 Q. Have you had a chance to  
17 look over Defendant's Exhibit 10?  
18 A. Yes.  
19 Q. Ever seen this before?  
20 A. I don't recall seeing it.  
21 Q. If you look at the third  
22 paragraph, I refer your attention  
23 there.  
24 A. Yes.

1 no.  
2 Q. In your review of  
3 Defendant's Exhibit 10, did you see  
4 any representations that you think  
5 are inaccurate?  
6 MR. SAUDER: Objection.  
7 Objection to the form.  
8 Objection to the fact that  
9 it calls for an opinion, and  
10 objection to the fact that if there's  
11 anything in here with regard to  
12 whether it calls for a legal opinion  
13 by a lay witness, and I would make  
14 that same objection with regard to  
15 every other time that question was  
16 asked.  
17 BY MR. BASSMAN:  
18 Q. You can answer.  
19 A. I don't -- I don't see  
20 anything that's inaccurate.  
21 Q. Let's put this one aside.  
22 Moving right along. Let's  
23 take a look at Number 11. Have you  
24 had an opportunity to review

Page 99

Page 101

1 Q. You see the second sentence  
2 begins, Recent stories? Could you  
3 just read that sentence aloud that  
4 begins Recent stories.  
5 A. Okay. Recent -- do you  
6 want me to read it aloud?  
7 Q. Yes.  
8 A. "Recent stories in the  
9 national media have raised concerns  
10 about some cash balance plans that do  
11 not offer the same level of financial  
12 security or grandfathering provisions  
13 as cash -- Conectiv's cash balance  
14 pension plan."  
15 Q. Thanks. Do you remember  
16 hearing any discussion in or around  
17 June 23rd, 1999 of stories in the  
18 national media raising concerns about  
19 cash balance plans?  
20 A. No, I don't.  
21 Q. Did you ever in 1999 try to  
22 research any media stories about cash  
23 balance plans?  
24 A. I don't recall doing so,

1 Defendant's 11?  
2 A. Yes.  
3 Q. Have you ever seen this  
4 document before?  
5 A. I don't remember seeing it,  
6 no.  
7 Q. Okay. You can put that one  
8 aside. You can put that one in the  
9 finished pile.  
10 Take a look at Defendant's  
11 Exhibit 12. Have you had an  
12 opportunity to look over Defendant's  
13 Exhibit 12?  
14 A. Yes.  
15 Q. Have you ever seen this  
16 before?  
17 A. I don't remember seeing it.  
18 Q. Have you ever seen any  
19 documents titled InSight Online?  
20 A. No, I don't. That probably  
21 wouldn't have been a document if it  
22 was online too, so...  
23 Q. Okay. Is there an intranet  
24 at Conectiv?

Page 102

Page 104

1 A. Yes, there is.  
 2 Q. And do you access the  
 3 intranet regularly?  
 4 A. Yes, I do.  
 5 Q. Have you ever seen an  
 6 InSight page on the Conectiv  
 7 intranet?  
 8 A. I don't recall. It's  
 9 Atlantic City Electric now, so it's a  
 10 different intranet site, so I don't  
 11 recall it.  
 12 Q. What types of material  
 13 generally right now are posted on the  
 14 Conectiv intranet?  
 15 A. On the Atlantic or on PHI?  
 16 Q. Or the Atlantic City, PHI  
 17 intranet.  
 18 A. Corporate directories,  
 19 news, employees information,  
 20 department information, phone  
 21 numbers.  
 22 Q. Are there any employee  
 23 newsletters or bulletins that are  
 24 posted on the intranet?

1 document before?  
 2 A. Yes, I have.  
 3 Q. When?  
 4 A. I can't recall.  
 5 Q. I believe you testified  
 6 earlier that you attended two  
 7 meetings of the cash balance plan in  
 8 '98 and '99?  
 9 A. That's correct.  
 10 Q. And you said the first  
 11 meeting at the end of '98 was very  
 12 general, right?  
 13 A. If I recall they were both  
 14 very general.  
 15 Q. Okay. Looking at the first  
 16 page of D-13, in the top left-hand  
 17 corner you see the date July 1999?  
 18 MR. SAUDER: Just for the  
 19 record, we're on MWW 219.  
 20 BY MR. BASSMAN:  
 21 Q. Right over there.  
 22 A. Oh, yes. Okay. Yes.  
 23 Q. Does looking at that date  
 24 refresh your recollection as to when

Page 103

Page 105

1 A. Yes, I think there is.  
 2 Q. Do you read them regularly?  
 3 A. Not regularly, no.  
 4 Q. Have you ever read them  
 5 regularly?  
 6 A. I don't recall, no. Not on  
 7 a regular basis.  
 8 Q. Any particular reason why  
 9 you read some intranet bulletins but  
 10 not others?  
 11 A. Something that catches my  
 12 eye if I happen to be on the site  
 13 from the heading.  
 14 Q. Do you remember anything  
 15 catching your eye about pension plan?  
 16 A. No, I don't.  
 17 Q. Put that one to the side.  
 18 Let's take a look at  
 19 Defendant's Exhibit 13.  
 20 A. Okay.  
 21 Q. Have you had a chance to  
 22 look over Defendant's 13?  
 23 A. Yes, I have.  
 24 Q. Have you ever seen this

1 you attended a meeting about the cash  
 2 balance plan?  
 3 A. No, it doesn't.  
 4 Q. And I assume when -- let's  
 5 take a step back.  
 6 When you testified that  
 7 you're not sure when you saw the  
 8 document that's been marked  
 9 Defendant's 13, is that because  
 10 you're not sure if you saw it as part  
 11 of your document collection effort  
 12 about 18 months ago or in some other  
 13 context?  
 14 A. That's correct.  
 15 Q. If you could turn to the  
 16 second page of this exhibit, which  
 17 has Bates number MWW 220, and I'd  
 18 like to direct your attention to the  
 19 upper left. Do you see a box that  
 20 says Important Perspectives on  
 21 Conectiv's New Retirement Program?  
 22 A. Yes.  
 23 Q. And you see the second  
 24 bullet says, cash balance plans are

Page 106

Page 108

1 controversial.  
 2 A. Yes.  
 3 Q. Do you remember any  
 4 discussions in 1999 with anyone at  
 5 Conectiv about cash balance plans  
 6 being controversial?  
 7 A. No.  
 8 Q. And I take it then you  
 9 don't remember either presenter at  
 10 the meetings you attended --  
 11 A. No, I don't.  
 12 Q. Hold on. Just wait for me  
 13 to finish.  
 14 A. I'm sorry.  
 15 Q. -- telling you that cash  
 16 balance plans are controversial?  
 17 A. No, I don't.  
 18 Q. See under the second  
 19 bullet, cash balance plans are  
 20 controversial, there's a little  
 21 subheading, Series of Wall Street  
 22 Journal articles. Do you see that?  
 23 A. Yes, I do.  
 24 Q. Do you remember hearing any

1 Wall Street Journal articles or  
 2 congressional hearings?  
 3 A. I can't really answer that.  
 4 Like I said, in prior, in 1998 and  
 5 1999 that time frame of the Conectiv  
 6 merger, I was more worried about  
 7 keeping my job than my retirement  
 8 plan, because we all had to bid our  
 9 jobs.  
 10 So I don't know if I can  
 11 answer that question correctly. I  
 12 don't know.  
 13 Q. Just if you could answer it  
 14 to the best of your ability.  
 15 A. I may have done maybe some  
 16 research, but I don't know.  
 17 Q. In looking over your  
 18 Defendant's Exhibit 13, did you see  
 19 any representations that you believe  
 20 are inaccurate?  
 21 MR. SAUDER: Objection to  
 22 form. Objection to the fact that it  
 23 calls for possibly a legal opinion by  
 24 a lay witness.

Page 107

Page 109

1 discussion in 1999 within Conectiv  
 2 about Wall Street Journal articles  
 3 addressing the cash balance plans?  
 4 A. No, I don't. And I don't  
 5 read the Wall Street Journal.  
 6 Q. Did any other employee whom  
 7 you spoke to make any reference to  
 8 Wall Street Journal articles about  
 9 cash balance plans?  
 10 A. Not that I recall.  
 11 Q. Under Wall Street Journal  
 12 articles there's another heading that  
 13 says Congressional Hearings. Do you  
 14 remember any discussion about  
 15 congressional hearings addressing  
 16 cash balance plans among Conectiv  
 17 employees in 1999?  
 18 A. No, I don't recall.  
 19 Q. If at one of your meetings  
 20 in '98 or '99 this slide was presented  
 21 which says Important Perspectives on  
 22 Conectiv's New Retirement Program  
 23 with these points, would you have  
 24 taken any action to research these

1 MR. BASSMAN: You can  
 2 answer.  
 3 THE WITNESS: As with all  
 4 the other documents of graphs and  
 5 charts and all that stuff, the  
 6 accuracy of the data I can't, can't  
 7 say it's accurate. I mean, I don't  
 8 see anything in writing that appears  
 9 to be inaccurate.  
 10 MR. BASSMAN: Okay. Put  
 11 that one to the side.  
 12 BY MR. BASSMAN:  
 13 Q. Take a look at Defendant's  
 14 Exhibit 14.  
 15 A. Okay.  
 16 Q. Have you had a chance to  
 17 look over Defendant's Exhibit 14?  
 18 A. Yes, I have.  
 19 Q. Ever seen this document  
 20 before?  
 21 A. I don't recall it, no.  
 22 Q. Ever see any document in  
 23 this format before with a Subject and  
 24 a Business Practice heading?



Page 110

Page 112

1 A. I mean I would get memos  
2 all the time with, you know, similar  
3 form letters, but...

4 Q. And does this appear to you  
5 to be a standard memo format for  
6 Conectiv?

7 A. It appears to be a business  
8 letter. There's no heading or  
9 anything on it that would normally be  
10 there, I mean, but it could be.

11 Q. In your review of  
12 Defendant's 14, do you see any  
13 representations that you believe are  
14 inaccurate?

15 A. No, I don't.

16 MR. SAUDER: Objection.  
17 Again, the fact that it may call for  
18 a legal opinion by a lay witness.

19 MR. BASSMAN: Put that one  
20 to the side.

21 Could we mark this.

22 (Exhibit D-22 was marked  
23 for identification.)

24 BY MR. BASSMAN:

1 A. That's correct.

2 Q. Okay. In your review of  
3 D-22, and just the first three pages  
4 of D-22, the ones that are Bates  
5 numbered MWW 308, 309 and 310, do you  
6 see any representations that you  
7 believe are inaccurate?

8 MR. SAUDER: Again,  
9 objection to the form, and objection  
10 to the fact that it calls for a legal  
11 opinion by a lay witness. Take your  
12 time and review the document.

13 THE WITNESS: No. I don't  
14 really see anything inaccurate.

15 MR. BASSMAN: Okay. You  
16 can put that to the side.

17 (Exhibit D-23 was marked  
18 for identification.)

19 BY MR. BASSMAN:

20 Q. You've been handed a  
21 document marked D-23. If you could  
22 please take a look over this.

23 A. Okay.

24 Q. Have you had a chance to

Page 111

Page 113

1 Q. You've just been handed a  
2 document that's been marked D-22. If  
3 you could take a moment to look it  
4 over.

5 Just so the record is  
6 clear, I think by accident the  
7 document that was the last exhibit we  
8 looked at, Number 14, was  
9 accidentally stapled to the back of  
10 this.

11 So just in case you start  
12 wondering why that's there. I think  
13 that was an accident.

14 A. Okay.

15 Q. Have you had an opportunity  
16 to take a look over D-22?

17 A. Yes.

18 Q. Ever seen this document  
19 before?

20 A. Yes, I have.

21 Q. Do you recall when?

22 A. No, I don't.

23 Q. Same difficulty as with the  
24 other documents?

1 look over D-23?

2 A. Yes, I have.

3 Q. Have you seen this before?

4 A. Yes, I have.

5 Q. Is D-23 a copy of a letter  
6 that you received from Lynn Curriden  
7 in September of 2002?

8 A. I think it is, yes.

9 Q. And accompanying this  
10 letter did you receive the  
11 attachments that are referred to?

12 A. Yes, I think I did, yes.

13 Q. Before receiving this  
14 letter in September of 2002, had you  
15 ever received a copy of a document  
16 called the Summary Plan Description?

17 A. I don't recall that.

18 Q. Have you ever heard of a  
19 Summary Plan Description?

20 A. I don't recall it, no.

21 Q. Doesn't ring a bell?

22 A. No, it doesn't.

23 Q. Do you ever remember  
24 reading a document titled Summary

Page 114

Page 116

1 Plan Description?

2 A. I just don't recall it. I  
3 may have.

4 Q. Here, let me show you one  
5 that might help you.

6 A. Okay.

7 Q. You can put that to the  
8 side.

9 A. (Witness complies.)

10 MR. BASSMAN: If you could  
11 mark this D-24.

12 (Exhibit D-24 was marked  
13 for identification.)

14 BY MR. BASSMAN:

15 Q. I've given you a document  
16 that's been marked D-24. If you  
17 could take a moment just to quickly  
18 skim through it. It's very long, so  
19 I wouldn't ask you to sit and read  
20 that through right now.

21 A. Okay.

22 Q. Have you had a chance to  
23 just give a quick skim to D-24?

24 A. Yes, I have.

1 whole or in part?

2 A. Possibly in part. Not in  
3 whole. I remember scanning the  
4 document but not --

5 Q. But not?

6 A. And I can't say when it  
7 was. Whether it was 2002 when it was  
8 presented or a couple years later or  
9 what.

10 Q. You're confident, though,  
11 that you've never read the document  
12 that's been marked D-24 cover to  
13 cover, word for word?

14 A. Relatively confident, yes.

15 Q. Do you remember which parts  
16 of the document marked D-24 you read  
17 in the past?

18 A. I would have read the cash  
19 balance and the ACE sub plan, not the  
20 DelMarVa sub plan.

21 Q. But you do recall reading  
22 the entire discussion on the cash  
23 balance sub plan at some point.

24 A. At some point, yes.

Page 115

Page 117

1 Q. Do you recognize D-24 as  
2 the Summary Plan Description that was  
3 enclosed in the September 2002  
4 letter?

5 A. Yes, I do.

6 Q. Did you read the Summary  
7 Plan Description?

8 A. I don't recall. I'm  
9 sure -- I don't recall doing that.

10 Q. Do you have any reason to  
11 believe that you did read it?

12 A. Could you repeat the  
13 question, please.

14 Q. Sure. Actually let me ask  
15 you a different question. Do you  
16 have any recollection of reading this  
17 document marked D-24 either in whole  
18 or in part at any time?

19 A. The last time I remember  
20 reading the document was 18 months  
21 ago when I compiled the documents.

22 Q. Do you have any  
23 recollection of reading the document  
24 that's been marked D-24 either in

1 Q. You don't recall whether  
2 you read it in September 2002 when  
3 you got the document.

4 A. That's correct.

5 Q. Had you ever received a  
6 copy of Summary Plan Description for  
7 the cash balance sub plan before  
8 September 2002?

9 A. I don't recall.

10 Q. Did you ever ask for one  
11 before September 2002?

12 A. I don't recall asking for  
13 one, no.

14 Q. Do you have any reason to  
15 believe that before September 2002 if  
16 you had asked the HR department at  
17 Conectiv for a copy of the Summary  
18 Plan Description for the cash balance  
19 sub plan that they would have  
20 withheld the document from you?

21 A. I have no reason to believe  
22 that.

23 Q. Do you think anyone from  
24 the Conectiv HR department has ever

Page 118

Page 120

1 lied to you?  
 2 MR. SAUDER: Objection.  
 3 Can you clarify the question? Ever  
 4 on any subject?  
 5 MR. BASSMAN: Yes.  
 6 MR. SAUDER: If you  
 7 understand the question you can  
 8 answer.  
 9 THE WITNESS: I've never  
 10 caught them in a lie. Have they ever  
 11 lied to me? I don't know.  
 12 BY MR. BASSMAN:  
 13 Q. Again, to the best of your  
 14 knowledge.  
 15 A. To the best of my  
 16 knowledge, I'm not aware of any lies  
 17 that they've told me in the past.  
 18 Q. Okay. Let's take a look at  
 19 what's been marked previously as  
 20 Defendant's 15. Take a look over  
 21 this document.  
 22 A. Okay.  
 23 Q. Have you had a chance to  
 24 look over Defendant's 15?

1 Q. Okay. Have you seen it  
 2 outside of discussions with your  
 3 counsel?  
 4 A. No.  
 5 Q. All right. If you could  
 6 take a look at the bottom half of  
 7 Defendant's 15, which is Mr. Charles'  
 8 e-mail to the HR department. If I  
 9 could direct your attention to the  
 10 second paragraph, last sentence.  
 11 Do you see the sentence  
 12 that Mr. Charles wrote, I always felt  
 13 from the inception of the cash  
 14 balance plan that it was unfair?  
 15 A. Yes.  
 16 Q. Has Mr. Charles expressed a  
 17 view to you that he's felt from the  
 18 inception of the cash balance plan  
 19 that it was unfair?  
 20 MR. SAUDER: And again, I  
 21 would just caution you to not convey  
 22 any communications that you had with  
 23 counsel in the presence of Mr.  
 24 Charles.

Page 119

Page 121

1 A. Yes, I have.  
 2 Q. Ever seen this document  
 3 before today?  
 4 A. In part at our -- a week  
 5 ago.  
 6 Q. Okay. Are you unsure if --  
 7 just answer this yes or no. Are you  
 8 unsure if to answer my question you  
 9 would have to disclose a conversation  
 10 with your attorney?  
 11 A. That's correct.  
 12 MR. BASSMAN: Why don't we  
 13 take a five-minute break. You guys  
 14 can just talk it over, and I just  
 15 want to make sure you have a chance  
 16 to convey your concerns to your  
 17 counsel.  
 18 THE WITNESS: Okay.  
 19 RECESS  
 20 BY MR. BASSMAN:  
 21 Q. Back on the record. The  
 22 question pending was have you seen  
 23 Defendant's Exhibit 15 before?  
 24 A. Yes, I have.

1 Anything you've had outside  
 2 of counsel's presence that was not  
 3 related to any legal advice, if you  
 4 can answer that question, go ahead  
 5 and answer it.  
 6 THE WITNESS: I don't  
 7 recall a comment from Mr. Charles  
 8 like that outside of counsel.  
 9 BY MR. BASSMAN:  
 10 Q. Okay. And again, leaving  
 11 aside any discussions with your  
 12 counsel, or any meetings where you  
 13 were present with your counsel, do  
 14 you remember anyone, any employee at  
 15 Conectiv, expressing to you that they  
 16 felt that from the inception of the  
 17 cash balance plan it was unfair?  
 18 A. No.  
 19 Q. Do you have any  
 20 recollection in 1998 or 1999 of any  
 21 Conectiv employees expressing the  
 22 opinion that the cash balance plan  
 23 was unfair?  
 24 A. A lot of the discussions

Page 122

Page 124

1 around the grandfathering and the age  
2 cutoff, but as far as the plan being  
3 unfair and for what particular  
4 reason, I don't recall anything.

5 Q. You can put that aside.

6 Do you personally sitting  
7 here today believe the cash balance  
8 plan is unfair?

9 A. Now?

10 Q. Yes.

11 A. Yes, I do.

12 Q. Why?

13 MR. SAUDER: Again, I'll  
14 just caution you to not reveal any  
15 communications you've had with your  
16 attorneys or anything you've learned  
17 based on discussions with your  
18 attorneys.

19 To the extent you can  
20 answer that question without  
21 breaching any attorney-client  
22 communications, then you can answer  
23 the question.

24 THE WITNESS: If we've

1 will be lower under the cash balance  
2 plan than it would have been if the  
3 old plan had continued?

4 A. That's correct.

5 Q. And you reached that  
6 conclusion running the calculations  
7 on the Pension Estimator and  
8 comparing those to Mr. Rehr's lump  
9 sum?

10 A. That's correct.

11 Q. And just so I'm clear,  
12 because I remember we had some  
13 discussion before about the age of  
14 departing employees as they retire.

15 You believe the plan's  
16 unfair because under the cash balance  
17 plan your benefit would be lower than  
18 it would have been under the old plan  
19 based on retirement dates of both age  
20 55 and age 65?

21 A. Can you rephrase the  
22 question.

23 Q. Sure. Let me break it into  
24 two questions.

Page 123

Page 125

1 discussed this in the past I mean --

2 MR. SAUDER: Can we just go  
3 off the record for a second.

4 MR. BASSMAN: Sure. Off  
5 the record.

6 (Discussion off the  
7 record.)

8 BY MR. BASSMAN:

9 Q. Back on the record.

10 A. Yes. I mean, my feeling is  
11 that, you know, I was converted from  
12 a traditional plan that I was in to a  
13 new cash balance plan in my early,  
14 mid-40s with almost 20 years of  
15 experience -- 20 years in the company  
16 and basically, you know, what I  
17 thought I was going to have at 55 now  
18 I'm not even going to have at 65.

19 So in that case, yes, I  
20 feel it's unfair.

21 Q. And when you say not going  
22 to have, I assume you mean that you  
23 believe that when you retire, whether  
24 at age 55 or age 65, your benefit

1 A. Okay.

2 Q. That was a little compound.  
3 Do you believe sitting here today  
4 that your retirement benefit, if you  
5 retire at age 55, will be lower under  
6 the cash balance plan than it would  
7 have been if the old plan had  
8 continued?

9 A. That's correct.

10 Q. Same question, but this  
11 time your retirement age is 65.

12 A. Yes, I do, but I don't know  
13 to what extent.

14 Q. So the calculations that  
15 you ran were assuming retirement at  
16 age 55?

17 A. At age, at age 55 I had the  
18 lump sum numbers, the approximate  
19 numbers from my fellow employees, and  
20 I didn't have any age 65 numbers from  
21 them, so...

22 Q. So you don't have a good  
23 comparison?

24 A. That's correct.

Page 126

Page 128

1 Q. Do you have any  
2 understanding if you decided to  
3 retire this afternoon how your  
4 benefits would compare under the cash  
5 balance plan versus the old plan?

6 A. I've never run those  
7 numbers. Never thought about it.

8 Q. Don't know?

9 A. No, I don't.

10 Q. Okay. Let's go ahead and  
11 mark this.

12 (Exhibit D-25 was marked  
13 for identification.)

14 BY MR. BASSMAN:

15 Q. I've given you a document  
16 that's been marked D-25. This is a  
17 copy of Plaintiffs' Consolidated  
18 Initial Disclosures in this case. If  
19 you could take a look over D-25.

20 A. Okay.

21 Q. Have you had a chance to  
22 look over D-25?

23 A. Yes, I have.

24 Q. Ever seen this document

1 Q. Just the Pension Estimator  
2 statements.

3 A. Yes.

4 MR. SAUDER: Indicating for  
5 the record D-21.

6 THE WITNESS: I'm not aware  
7 of anything else that's missing.

8 BY MR. BASSMAN:

9 Q. Okay. Do you have any  
10 documents in your possession today  
11 that relate to the cash balance plan  
12 that you have not provided to your  
13 attorneys?

14 A. No, I don't.

15 Q. Leaving aside hard copy  
16 documents, you mentioned earlier you  
17 had a personal home e-mail account;  
18 is that right?

19 A. Yes, I do.

20 Q. Have you ever sent or  
21 received e-mails relating to the  
22 Conectiv cash balance plan in your  
23 home e-mail account?

24 A. I don't recall doing that,

Page 127

Page 129

1 before?

2 A. Yes, I think I have.

3 Q. If you could turn to page  
4 seven. Do you see there's a heading  
5 Maurice W. Ward, Jr., on the top of  
6 the page?

7 A. Yes, I do.

8 Q. Could you look over the  
9 list of documents that begins under  
10 your name and continues to the top of  
11 page eight if you see?

12 A. Yes.

13 Q. And just confirm for me  
14 that these are documents that you  
15 provided to your counsel.

16 A. I mean, I don't know if  
17 this is all of them or if it's a full  
18 list or what. I don't have it in my  
19 memory everything I've given them,  
20 but I assume it's correct.

21 Q. Do any documents appear to  
22 be missing to you?

23 A. Just those statements that  
24 I know aren't listed.

1 no.

2 Q. Do you exchange e-mails on  
3 your home e-mail account with Mr.  
4 Charles?

5 A. No, I don't. Oh, not  
6 documents.

7 Q. Have you ever sent or  
8 received an e-mail from Mr. Charles  
9 off your home e-mail account?

10 A. Yes, I have.

11 Q. More than once?

12 A. Maybe. Probably one or two  
13 times. Three times maybe. Small  
14 number.

15 Q. Did you search those  
16 e-mails in connection with this  
17 litigation to see if any of them  
18 address the cash balance plan?

19 A. No, I didn't. They were  
20 just recent e-mails, so...

21 Q. Did any of these recent  
22 e-mails address the cash balance  
23 plan?

24 A. They were just dates of

Page 130

Page 132

1 meetings and stuff.

2 Q. About this lawsuit?

3 A. Yeah. Yes.

4 MR. BASSMAN: Have these  
5 been withheld as privileged?

6 MR. SAUDER: Dates of  
7 meetings with regard to e-mails?

8 MR. BASSMAN: Whatever  
9 these e-mails that have been  
10 exchanged between Mr. Ward and Mr.  
11 Charles.

12 MR. SAUDER: We may not  
13 have a copy of the e-mails that were  
14 exchanged with regard to the dates to  
15 depositions and dates to anything  
16 else relevant to this litigation.

17 So if you want to request a  
18 copy, you know, we can certainly see  
19 if we can get copies of them and take  
20 a look at them and see if there's any  
21 privilege or any work product.

22 MR. BASSMAN: I would ask  
23 if you could go and search Mr. Ward's  
24 e-mail account from his home e-mail

1 MR. BASSMAN: Page nine,  
2 yes.

3 THE WITNESS: Starting out  
4 Reformation of the?

5 BY MR. BASSMAN:

6 Q. Yes.

7 A. Okay.

8 Q. Do those two bullets I just  
9 directed you to accurately reflect  
10 what you would like the court to do  
11 in this case?

12 A. Yes.

13 Q. And that would be to  
14 eliminate the cash balance plan and  
15 reinstate the old plan, right?

16 A. That's correct.

17 Q. And do you think that you  
18 will be better off financially if the  
19 court were to do that?

20 A. Yes.

21 Q. If it were to turn out that  
22 your retirement benefits were higher  
23 under the cash balance plan than they  
24 would have been under the old plan,

Page 131

Page 133

1 to see if he has any responsive  
2 documents, because we think those  
3 would be encompassed in our document  
4 requests.

5 MR. SAUDER: Okay.

6 MR. BASSMAN: Thanks.

7 BY MR. BASSMAN:

8 Q. The same document,  
9 Defendant's 25. If you could turn to  
10 page eight. You see the heading that  
11 says Rule 26 (a)(1)(C) Disclosure  
12 Damage Computation?

13 A. Yes.

14 Q. If you could turn to the  
15 next page. Under that heading  
16 there's a bullet -- I want you to  
17 look at the second and third bullets.

18 If you could read over them  
19 and confirm for me that this is the  
20 relief that you personally would like  
21 from the court if you won this  
22 lawsuit.

23 MR. SAUDER: Are you on  
24 page nine?

1 would you change your mind?

2 MR. SAUDER: Objection to  
3 the form.

4 BY MR. BASSMAN:

5 Q. You can answer.

6 A. No. Because of the age,  
7 because of the age also. The age 65  
8 versus age 55 retirement date.

9 Q. I'm not sure I follow. Can  
10 you explain what you mean?

11 A. In the ACE plan, in the  
12 traditional Atlantic plan that we  
13 have now I could retire at 55 with no  
14 reduction in benefit. At age -- I'd  
15 have to work until I'm 65 under the  
16 Conectiv cash balance plan.

17 So I would have to work ten  
18 more years basically to get a similar  
19 benefit.

20 Q. Besides losing the early  
21 retirement option that was in the old  
22 ACE plan, has the cash balance plan  
23 conversion harmed you in any way?

24 MR. SAUDER: Objection.



Page 134

Page 136

1 THE WITNESS: Could you  
2 clarify that a little bit?  
3 BY MR. BASSMAN:  
4 Q. Sure. Leaving aside the  
5 loss of the age 55 early retirement  
6 option, putting that to the side, do  
7 you believe that Conectiv switching  
8 from the old ACE plan to the cash  
9 balance plan made you worse off in  
10 any way?

11 MR. SAUDER: Objection.  
12 Ambiguous.

13 THE WITNESS: Financially I  
14 feel it has.

15 BY MR. BASSMAN:

16 Q. In what way?

17 A. I feel the benefit is less.  
18 Based on my calculations, the  
19 benefit's less.

20 Q. Anything else?

21 A. The cash balance plan  
22 itself or the lawsuit I mean?

23 Q. No. Just the cash balance.

24 A. No, I'm not aware of any.

1 Q. You can't say, just so I'm  
2 clear, leaving aside any discussions  
3 you might have with your attorney,  
4 you cannot say that you have an  
5 understanding as to how the interest  
6 credit mechanism works in the cash  
7 balance plan?

8 A. Just by the documents that  
9 have been provided, they showed that  
10 it varies. It averages eight percent  
11 based on the U.S. Treasury, you know.

12 Q. So leaving aside your  
13 discussions with attorneys, you did  
14 understand that the interest credit  
15 rate does change year to year?

16 A. That's what the documents  
17 say.

18 Q. Do you have any reason to  
19 believe the documents are false in  
20 any way in that regard?

21 A. No.

22 Q. Do you believe they're  
23 true?

24 A. Yes. I guess, yeah.

Page 135

Page 137

1 Q. Okay. By the way, you can  
2 put Defendant's 25 to the side in the  
3 increasingly large done pile.

4 One of the things that you  
5 testified about earlier is that it's  
6 your understanding that the interest  
7 rate that the cash balance plan  
8 applies to your account each year  
9 changes year to year, right?

10 MR. SAUDER: I would just  
11 caution the witness with regard to  
12 the fact that anything you learned in  
13 attorney-client communications, to  
14 not convey.

15 If there's something you  
16 learned prior to retaining an  
17 attorney or outside of the  
18 attorney-client communication you can  
19 answer.

20 THE WITNESS: I kind of  
21 like to hold off on that, because I'm  
22 not sure when I heard it or how I  
23 heard it.

24 BY MR. BASSMAN:

1 Q. And you also testified  
2 earlier that it's your understanding  
3 that the interest credit rate is  
4 pegged to the treasury rate in some  
5 way.

6 A. In some way.

7 Q. Do you believe that the  
8 fact that the interest credit rate  
9 changes year to year is unfair to  
10 you?

11 MR. SAUDER: Objection.  
12 Again, I would just caution you not  
13 to answer if it's going to breach any  
14 attorney-client communications.

15 If you can answer that  
16 question outside the scope of any  
17 communications you had with counsel,  
18 you can answer.

19 THE WITNESS: I can't at  
20 that point then.

21 BY MR. BASSMAN:

22 Q. Okay. Any knowledge you  
23 have would come from your  
24 attorney-client communications?

Page 138

Page 140

1 A. That's correct.  
 2 Q. Okay. I assume you would  
 3 give me the same answer if I changed  
 4 the word unfair to harm or injury in  
 5 the question?  
 6 A. Yes.  
 7 Q. I've kind of reached a  
 8 logical stopping point and if it's  
 9 okay with everyone, let's take a  
 10 break for lunch.  
 11 A. Sure.  
 12 MR. BASSMAN: We'll  
 13 reconvene at 1:15.  
 14 (Luncheon recess at  
 15 12:17 p.m.)  
 16 (Testimony resumed at  
 17 1:34 p.m.)  
 18 BY MR. BASSMAN:  
 19 Q. On the record. Good  
 20 afternoon, Mr. Fink. I wanted to  
 21 switch gears with you.  
 22 A. Mr. Ward.  
 23 Q. Mr. Ward. Excuse me. I'm  
 24 sorry.

1 Q. And the union has a  
 2 separate plan than the cash balance  
 3 plan?  
 4 A. Yes.  
 5 Q. For the union's members I  
 6 mean.  
 7 A. Yes.  
 8 Q. They're covered in a  
 9 different plan.  
 10 A. Yes, they are.  
 11 Q. And that plan that they're  
 12 covered on is the old ACE plan that  
 13 you used to be covered under, right?  
 14 A. Yes, it is.  
 15 Q. Their plan never converted  
 16 over to the cash balance plan.  
 17 A. That's correct.  
 18 Q. Are you aware of any  
 19 disputes between Local 210 and  
 20 Conectiv's management about how to  
 21 calculate pension payments under  
 22 their plan?  
 23 A. No, I'm not.  
 24 Q. Were the lump sums

Page 139

Page 141

1 A. I've been called a lot of  
 2 things.  
 3 Q. I'm thinking of tomorrow.  
 4 A. Never Fink.  
 5 Q. Did you ever hear of a  
 6 dispute dealing with pension plan  
 7 computations between Local 210 and  
 8 Conectiv?  
 9 MR. SAUDER: Objection.  
 10 THE WITNESS: Could you  
 11 rephrase the question, please?  
 12 BY MR. BASSMAN:  
 13 Q. Sure. There was a union  
 14 that represented certain employees of  
 15 Atlantic City; is that right?  
 16 A. Yes.  
 17 Q. Is that Local 210?  
 18 A. Yes, it is.  
 19 Q. And what's the parent  
 20 union? Local 210 of?  
 21 A. IBEW.  
 22 Q. International Brotherhood  
 23 of Electrical Workers?  
 24 A. Yes.

1 available under the old ACE plan?  
 2 A. To who?  
 3 Q. To a retiring employee.  
 4 Could you take your benefit as a lump  
 5 sum?  
 6 A. Yes.  
 7 Q. Like Mr. Rehr did.  
 8 A. That's correct.  
 9 Q. And do you have any  
 10 understanding as to how those lump  
 11 sums were computed under the old ACE  
 12 plan?  
 13 A. No, I don't. Not the  
 14 specifics.  
 15 Q. Do you have any general  
 16 understanding as to how they were  
 17 computed?  
 18 A. Very general knowledge  
 19 using some formula -- let me back up  
 20 and say if no, I really don't have  
 21 any detail on that.  
 22 Q. Tell me what you got.  
 23 A. Okay. It's a, it's a  
 24 calculated number based on some

Page 142

Page 144

1 federal, federal guidelines. There's  
2 like a -- I can't even explain it. I  
3 don't really have any specifics.  
4 Q. When you say federal  
5 guidelines, those federal guidelines  
6 that deal in some way or another with  
7 interest rates?

8 A. It's like a --

9 MR. SAUDER: Again, I would  
10 just object to the extent if it  
11 involves any attorney-client  
12 communication.

13 Other than that, if you can  
14 answer the question without  
15 discussing anything that was  
16 discussed with your counsel, go ahead  
17 and answer the question.

18 THE WITNESS: The old plan  
19 was calculated I think using -- I  
20 can't remember the name of the, the  
21 P --

22 BY MR. BASSMAN:

23 Q. PBGC?

24 A. Yes. That number was

1 every year from Vanguard that gives  
2 you your account balance, right?

3 A. Yes.

4 Q. And is it your  
5 understanding that when you retire,  
6 if you take a lump sum payment, it  
7 will be the amount that's listed in  
8 your account balance?

9 A. Yes.

10 Q. Do you understand that you  
11 also have the option under the cash  
12 balance plan to take an annuity  
13 instead of a lump sum?

14 A. Yes.

15 Q. Do you have any  
16 understanding as to how the annuity  
17 would be computed under the cash  
18 balance plan?

19 A. No, not the details of it.  
20 Just that the Vanguard calculator  
21 shows what it would be.

22 Q. When you looked at the  
23 Vanguard calculator to see what it  
24 would be, did you notice that the

Page 143

Page 145

1 involved along with some other number  
2 and it looked at the -- it looked at  
3 also an interest rate, but I don't  
4 know what it was based on. Probably  
5 some kind of a bond rate or something  
6 was involved, I think.

7 Q. Do you remember any  
8 disagreement between Local 210 of the  
9 IBEW and Conectiv's management about  
10 what interest rate should be used in  
11 the lump sum calculation for the  
12 union members?

13 A. No specifics on it, no, I  
14 don't.

15 Q. Anything more general that  
16 you heard about that?

17 A. No, I don't.

18 Q. You testified earlier, Mr.  
19 Ward, that your understanding of the  
20 cash balance plan is that you get an  
21 account, a hypothetical account, that  
22 is added to each year, right?

23 A. Yes.

24 Q. And you get a statement

1 numbers tended to move around up and  
2 down on the annuity?

3 A. Yes, I did, but I couldn't  
4 relate it to the way I ran the  
5 Estimator, because I ran so many  
6 versions of it, or whether it had to  
7 do with some kind of a monthly or  
8 yearly. So yes, I did see it change,  
9 but I didn't know why.

10 Q. So from what you saw, as  
11 you understood it, for whatever  
12 reasons, and I'm not asking you to be  
13 an expert actuary certainly or know  
14 how this stuff is computed -- I know  
15 I probably couldn't give you details  
16 how it's computed either, but for  
17 whatever reason if you took your  
18 payment as an annuity from what you  
19 saw under the cash balance plan, the  
20 amount of the annuity as a monthly  
21 payment seems to go up and down when  
22 you ran different tests on the  
23 Pension Estimator, right?

24 MR. SAUDER: Objection with

Page 146

Page 148

1 regard to ambiguity of the question.  
 2 BY MR. BASSMAN:  
 3 Q. You can answer.  
 4 A. Yes, I did.  
 5 Q. Let's talk for a second  
 6 about the old plan, the ACE plan.  
 7 Do you have an understanding as to  
 8 how -- let me take a step back. Can  
 9 we talk about lump sum for a second.  
 10 You understand that under  
 11 the old ACE plan before the cash  
 12 balance plan you could take your  
 13 benefit in the form of an annuity,  
 14 right?  
 15 A. Yes.  
 16 Q. And that would be a certain  
 17 payment per month for the rest of  
 18 your life.  
 19 A. Yes.  
 20 Q. And do you have any  
 21 understanding as to how the annuity  
 22 was calculated?  
 23 A. Yes.  
 24 Q. What's your understanding?

1 Q. Let me give you a  
 2 hypothetical. It will clear this up.  
 3 If you assume that same,  
 4 you know, salary history, you retire  
 5 in 2004 with 30 years, somebody else  
 6 retires in 2006 with 30 years, under  
 7 the old ACE plan, the two of you  
 8 should get the same annuity.  
 9 MR. SAUDER: Objection.  
 10 THE WITNESS: Yes.  
 11 BY MR. BASSMAN:  
 12 Q. Okay. Do you have any  
 13 understanding if the same two  
 14 hypothetical, you and Mr.  
 15 hypothetical here, both retiring  
 16 after 30 years, one of you in '04,  
 17 one of you in '06, same salary  
 18 history, do you have any  
 19 understanding that the two of you  
 20 would get the same lump sum  
 21 necessarily under the old plan?  
 22 A. Could you repeat the  
 23 question. I'm sorry.  
 24 Q. Sure. Going back to this

Page 147

Page 149

1 A. That it's the average of my  
 2 highest five of the last ten years  
 3 and it's 1.6 percent times my number  
 4 of years service times my highest  
 5 average peak salary -- the highest  
 6 average salary for five of the last  
 7 ten.  
 8 Q. Okay. So in the old plan  
 9 then, the ACE plan, in terms of your  
 10 annuity, as long as you're retiring  
 11 with the same salary history and the  
 12 same years of service, you know,  
 13 whether that point hits in 2004,  
 14 2005, 2006, you should get the same  
 15 annuity, right?  
 16 A. No. Because my years of  
 17 service make the multiplier go up.  
 18 Q. Assuming that your years of  
 19 service are the same, the fact that  
 20 you hit the years of service in '04  
 21 as opposed to '05 shouldn't affect  
 22 your annuity.  
 23 A. But in '05 I'll have more  
 24 years than I do in '04.

1 hypothetical, two employees under the  
 2 old ACE plan, both retiring with the  
 3 exact same salary history, both have  
 4 30 years of service. One retires in  
 5 2004, one retires in 2006.  
 6 If they both opt for a lump  
 7 sum payment at retirement, is it your  
 8 understanding that their lump sum  
 9 payments will necessarily be the same  
 10 or could they differ?  
 11 A. They could differ.  
 12 Q. Why do you think that is?  
 13 A. Because of the items I  
 14 couldn't describe earlier that were  
 15 variables based on bond rate or  
 16 whatever you use to calculate that  
 17 number.  
 18 Q. But something varies when  
 19 you calculate it, the lump sums,  
 20 under the old plan. You don't know  
 21 exactly what, but there's something  
 22 variable.  
 23 A. That's correct. Could  
 24 vary, yes.

Page 150

Page 152

1 MR. BASSMAN: Okay. I want  
2 to go ahead and I'm going to mark a  
3 few.

4 (Exhibits D-26 through D-30  
5 were marked for identification.)

6 BY MR. BASSMAN:

7 Q. Mr. Ward, I've just handed  
8 you a series of documents marked  
9 Defendant's 26, 27, 28 and 29 and 30.  
10 If you could take a moment to look  
11 them over.

12 A. Okay.

13 Q. Have you had a chance to  
14 look over Defendant's Exhibit 26, 27,  
15 28, 29 and 30?

16 A. Yes.

17 Q. Are these documents all  
18 copies of statements that you  
19 received from Vanguard for your cash  
20 balance account?

21 A. Yes.

22 MR. SAUDER: I would just  
23 ask that these documents also be  
24 marked confidential.

1 which ones I sent. I sent all I had  
2 to my attorneys.

3 Q. So whatever you had you  
4 sent to --

5 A. That's correct.

6 Q. -- your counsel?

7 A. That's correct.

8 Q. Do you remember throwing  
9 out any statements from Vanguard at  
10 any point?

11 A. I don't remember throwing  
12 any out, no.

13 Q. And do you recall  
14 approximately when you sent your  
15 statements over to your counsel?

16 A. It would have been last  
17 fall. 2005, fall of 2005.

18 Q. Is there a file that you  
19 have in your home where you keep all  
20 these statements?

21 A. There is now.

22 Q. Was there in 1999?

23 A. No. Not particularly, no.

24 Q. Back in 1999, was there any

Page 151

Page 153

1 MR. BASSMAN: Sure.

2 MR. SAUDER: And this part  
3 of the transcript be marked  
4 confidential.

5 MR. BASSMAN: No objection.

6 BY MR. BASSMAN:

7 Q. And one of the things I  
8 noticed, these are in chronological  
9 order, Mr. Ward. The earliest we  
10 have is one that goes January 1 of  
11 2001 to December 31, 2001. That's  
12 Defendant's 26.

13 A. Yes.

14 Q. Did you receive statements  
15 in 1999 and in 2000 from Vanguard for  
16 the cash balance plan?

17 A. I assume I did. I don't  
18 know.

19 Q. Any reason to think you  
20 didn't?

21 A. No.

22 Q. Did you retain any  
23 statements from 1999 or 2000?

24 A. I sent -- I don't know

1 sort of file or area in your home at  
2 all where you kept pension related  
3 materials?

4 A. No.

5 Q. Was this anywhere in your  
6 office where you kept documents or  
7 materials that related to your  
8 pension plan back in '99?

9 A. No. My office moved three  
10 or four times. No.

11 Q. Looking at Defendant's 26,  
12 27, 28, 29 and 30, do you have any  
13 reason to believe that any of the  
14 information on these Vanguard  
15 statements is inaccurate in any way?

16 MR. SAUDER: Objection.

17 Object just to the extent that it  
18 calls for any legal conclusion by a  
19 lay witness. You can answer.

20 THE WITNESS: I can't  
21 validate the numbers, but I assume  
22 they're correct.

23 BY MR. BASSMAN:

24 Q. You have no reason to

Page 154

Page 156

1 believe they're incorrect or not?  
 2 A. No. That's correct.  
 3 Q. I want you to look over  
 4 these statements Defendant's Exhibit  
 5 26 through 30. Can you confirm for  
 6 me that each year your ending account  
 7 balance is higher than it was for the  
 8 previous year?  
 9 A. Yes.  
 10 Q. And in fact, since the cash  
 11 balance plan has been in effect, has  
 12 your account balance ever decreased?  
 13 A. You mean the ending  
 14 balance?  
 15 Q. Yeah.  
 16 A. No.  
 17 Q. It always goes higher each  
 18 time you get a statement?  
 19 A. By some number, yes.  
 20 Q. Have you ever called  
 21 Vanguard to discuss anything that  
 22 appeared on your cash balance plan  
 23 statement?  
 24 A. No.

1 as to why the cash balance plan is  
 2 age discriminatory?  
 3 MR. SAUDER: You can answer  
 4 to the extent you don't violate any  
 5 attorney-client communications.  
 6 THE WITNESS: Are you  
 7 talking about in our Complaint?  
 8 BY MR. BASSMAN:  
 9 Q. I'm just talking in  
 10 general. Let me back up for a  
 11 second.  
 12 Is it your personal belief,  
 13 just yes or no sitting here today,  
 14 that the Conectiv cash balance plan  
 15 is age discriminatory?  
 16 A. Yes.  
 17 Q. When did you form that  
 18 belief?  
 19 A. Around 2004.  
 20 Q. During your discussions  
 21 with Mr. Rehr?  
 22 A. Yes.  
 23 Q. And in 2004, what was the  
 24 basis of your belief that the cash

Page 155

Page 157

1 Q. Ever communicated with  
 2 Vanguard in any way about your cash  
 3 balance plan account?  
 4 A. No.  
 5 MR. SAUDER: Just to  
 6 clarify, with the exception of --  
 7 MR. BASSMAN: With the  
 8 exception of Pension Estimator.  
 9 THE WITNESS: Yes.  
 10 MR. BASSMAN: I was leaving  
 11 that to the side. That's a good  
 12 clarification.  
 13 BY MR. BASSMAN:  
 14 Q. Okay. You can put those  
 15 aside.  
 16 I want to talk to you a  
 17 little bit about your claims you've  
 18 asserted in your Complaint. Do you  
 19 understand that one of the claims  
 20 that you have asserted against  
 21 Conectiv is that the cash balance  
 22 plan is age discriminatory?  
 23 A. Yes.  
 24 Q. What is your understanding

1 balance plan is age discriminatory?  
 2 A. Because I was converted to  
 3 a plan in my early forties that gave  
 4 me a reduced benefit that I couldn't  
 5 make up in the remaining years I have  
 6 before I reach retirement age.  
 7 Q. Okay. So just so I'm a  
 8 little clear on what the issue is  
 9 here, if the cash balance plan had  
 10 existed from your first day at  
 11 Atlantic City, you wouldn't have  
 12 considered it age discriminatory?  
 13 A. Not based on the  
 14 information I have, no.  
 15 Q. Interest credits are given  
 16 to everyone the same amount  
 17 regardless of age -- same rate,  
 18 excuse me, regardless of age each  
 19 year?  
 20 MR. SAUDER: Objection.  
 21 Can you rephrase the question?  
 22 MR. BASSMAN: Sure.  
 23 BY MR. BASSMAN:  
 24 Q. I'll make it a little



Page 158

Page 160

1 clearer. The cash balance plan  
2 provides the same interest credit  
3 rate for each employee each year  
4 regardless of age, right?  
5 MR. SAUDER: I would again  
6 object. I would just object to the  
7 extent it violates any  
8 attorney-client communication. If  
9 you can answer beyond that.  
10 THE WITNESS: Yeah, I'd  
11 rather not answer that.  
12 BY MR. BASSMAN:  
13 Q. So independent of  
14 discussions with your counsel, I just  
15 want to be clear, you have no  
16 understanding as to whether a  
17 participant in the Conectiv cash  
18 balance plan's interest credit rate  
19 for a particular year is different  
20 based on age?  
21 A. Based on the documentation  
22 from the cash balance plan it says  
23 that the interest rates are the same  
24 for everybody regardless of age.

1 A. Yes.  
2 Q. And older employees get a  
3 higher pay credit rate than younger  
4 employees, right?  
5 A. Yes.  
6 Q. So in terms of the pay  
7 credit rate, the plan is tilted in  
8 favor of older employees, right?  
9 MR. SAUDER: Objection.  
10 THE WITNESS: I agree they  
11 get a higher percent. Is it -- I  
12 don't know where the curve takes it,  
13 but they do get a higher percent. So  
14 there is some advantage for the older  
15 employees.  
16 BY MR. BASSMAN:  
17 Q. There's also something  
18 called the transition credit, right?  
19 A. Yes.  
20 Q. What is your understanding  
21 of what a transition credit is?  
22 A. Boy, I don't remember  
23 exactly.  
24 Q. Do you recall a transition

Page 159

Page 161

1 Q. And do you have any reason  
2 to believe those documents are false?  
3 A. That's where I have to rely  
4 on...  
5 Q. Okay. Outside of  
6 discussions with counsel, do you have  
7 any reason to believe those documents  
8 are false?  
9 A. No.  
10 Q. Then in addition there's a  
11 what's called a pay credit under the  
12 cash balance plan, right, that's  
13 added to your account balance each  
14 year?  
15 A. Uh-huh.  
16 Q. Is that yes?  
17 A. Yes. I'm sorry. Yes.  
18 Q. And the pay credit is a  
19 certain percentage of your salary  
20 gets credited into the account,  
21 right?  
22 A. Yes.  
23 Q. And that pay credit rate  
24 does vary with age, right?

1 credit rate -- let me see if I can  
2 jog your memory a little -- being a  
3 credit that certain long-term  
4 employees got of Conectiv at the time  
5 of the conversion?  
6 MR. SAUDER: Objection to  
7 the term long-term employee.  
8 MR. BASSMAN: I'll  
9 rephrase.  
10 BY MR. BASSMAN:  
11 Q. Take a look at Defendant's  
12 20. Defendant's Exhibit 20 is a copy  
13 of the Complaint that your counsel  
14 filed on your behalf in this case.  
15 If you could turn to page  
16 ten of the Complaint. You'll see  
17 there's a chart on the top of the  
18 page that your counsel prepared.  
19 A. Yes.  
20 Q. Do you see that?  
21 A. Yes, I do.  
22 Q. And then on one side of the  
23 chart is years of service and on the  
24 other is transition crediting rate?

Page 162

Page 164

1 A. Yes.  
 2 Q. Does this chart refresh  
 3 your recollection that for employees  
 4 of a certain tenure in the cash  
 5 balance plan there's an additional  
 6 transition crediting rate that's  
 7 added to your account balance?  
 8 A. Yes.  
 9 Q. And that's a feature that  
 10 will favor longer term employees,  
 11 right?  
 12 A. Yes.  
 13 Q. How long have you been with  
 14 the company, sir?  
 15 A. 25 years.  
 16 Q. So you are eligible for the  
 17 maximum transition crediting rate;  
 18 correct?  
 19 A. Yes.  
 20 Q. So as compared to say an 18  
 21 year old who would be hired tomorrow  
 22 by Conectiv, you will have a higher  
 23 pay credit rate and a higher  
 24 transitioning crediting rate for your

1 the difference in the retirement  
 2 fund.  
 3 Q. So it would be those  
 4 employees who are over 40 but too  
 5 young to get the grandfather benefit?  
 6 A. That's correct.  
 7 Q. In your opinion, again,  
 8 just your personal opinion, do you  
 9 believe that any employees of  
 10 Conectiv benefited from the  
 11 conversion to a cash balance plan?  
 12 A. I'm personally not aware of  
 13 any.  
 14 Q. Do you think it's possible  
 15 that anyone could benefit from the  
 16 conversion to the cash balance plan?  
 17 MR. SAUDER: Objection.  
 18 THE WITNESS: I'm not an  
 19 actuary to run the numbers. I  
 20 haven't seen it, but I can't answer  
 21 that.  
 22 BY MR. BASSMAN:  
 23 Q. You don't know one way or  
 24 the other?

Page 163

Page 165

1 account, right?  
 2 A. Yes.  
 3 Q. And the same interest  
 4 credit rate?  
 5 A. Yes.  
 6 Q. So purely based on the fact  
 7 that you would be older than the 18  
 8 year old new hire and that you have  
 9 worked longer, you'll be getting  
 10 money added to your account at a  
 11 faster rate; correct?  
 12 A. Yes.  
 13 MR. SAUDER: Objection.  
 14 BY MR. BASSMAN:  
 15 Q. Now, to go back to when we  
 16 started talking a little bit earlier  
 17 about your belief about age  
 18 discrimination in 2004, who did you  
 19 believe were the victims of  
 20 discrimination then?  
 21 A. My belief was really  
 22 anybody over the age of about 40 that  
 23 you wouldn't really have enough years  
 24 to even change employers to make up

1 A. Yeah. I don't know one way  
 2 or the other, that's correct.  
 3 Q. Now, you've described for  
 4 us a couple points why you think that  
 5 it would be in your personal interest  
 6 to have the court declare the cash  
 7 balance plan illegal and reinstate  
 8 the old ACE plan. Do you recall that  
 9 testimony?  
 10 A. Yes.  
 11 Q. If someone were to benefit  
 12 financially from the plan conversion,  
 13 do you believe that they would have  
 14 different interest than yours?  
 15 A. Could you --  
 16 Q. Sure. You believe that  
 17 it's in your personal financial self  
 18 interest to have the cash balance  
 19 plan eliminated and the old ACE plan  
 20 reinstated, right?  
 21 A. Yes.  
 22 Q. If the old plan were  
 23 reinstated, your retirement benefits  
 24 will be higher, right?

Page 166

Page 168

1 A. Yes.  
 2 Q. And in order to achieve  
 3 that result, you filed this lawsuit,  
 4 right?  
 5 A. Yes.  
 6 Q. If somebody's benefits  
 7 would be higher under the cash  
 8 balance plan than the ACE plan, do  
 9 you believe it would be in their self  
 10 interest for this lawsuit to win?  
 11 MR. SAUDER: Objection.  
 12 THE WITNESS: I mean, if it  
 13 would financially hurt them to go  
 14 back to the --  
 15 BY MR. BASSMAN:  
 16 Q. Yes.  
 17 A. I can't see how it could be  
 18 in their best interest unless there's  
 19 years of retirement involved.  
 20 Because if they could retire five  
 21 years sooner, what's that worth. I  
 22 don't know. I can't put a number on  
 23 that.  
 24 So to answer that question,

1 Q. You could choose to retire  
 2 today; you would just have lower  
 3 benefits --  
 4 A. Yes.  
 5 Q. -- than if you continued to  
 6 work longer, right?  
 7 A. Yes. But under the ACE  
 8 plan I couldn't retire today. You  
 9 would have to be 55.  
 10 Q. To retire with full  
 11 benefits?  
 12 A. Even, even under the old  
 13 plan you have to be 55 years of age  
 14 to go under ACE.  
 15 Q. Okay. If you retire today,  
 16 do you have any understanding as to  
 17 whether you would be paid any  
 18 benefits?  
 19 A. Define benefits.  
 20 Q. Could you get your account  
 21 balance paid to you in a lump sum if  
 22 you retired today?  
 23 A. Yes.  
 24 Q. Was that the case under the

Page 167

Page 169

1 I would have to try to put myself in  
 2 somebody else's shoes which is hard  
 3 to do.  
 4 Q. Okay.  
 5 A. Because the financial piece  
 6 isn't the only piece.  
 7 Q. What would the other piece  
 8 be?  
 9 A. Five years not working.  
 10 Q. So just the ability to  
 11 leave early?  
 12 A. Yes.  
 13 Q. And when you say the  
 14 ability to leave early, I assume you  
 15 mean the ability to retire early with  
 16 full retirement benefits, right?  
 17 A. That's correct.  
 18 Q. There's nothing that would  
 19 stop you tomorrow from retiring,  
 20 right?  
 21 MR. SAUDER: Objection.  
 22 BY MR. BASSMAN:  
 23 Q. If you wanted to.  
 24 A. If I had the age, you know.

1 old plan?  
 2 A. No.  
 3 Q. Is that an advantage of the  
 4 cash balance plan?  
 5 A. To someone that was  
 6 planning on leaving, yes. And that  
 7 was a portable plan, and that is one  
 8 advantage.  
 9 Q. So for somebody who's a  
 10 shorter term employee, the cash  
 11 balance plan may be better than the  
 12 old ACE plan?  
 13 A. It's possible, yes.  
 14 Q. If you decided to change  
 15 jobs tomorrow since -- I assume  
 16 you're under age 55 right now?  
 17 A. Yes, I am.  
 18 Q. If you decided to change  
 19 jobs tomorrow, you will have  
 20 benefited from the conversion, won't  
 21 you?  
 22 MR. SAUDER: Objection.  
 23 THE WITNESS: Not  
 24 necessarily.

Page 170

Page 172

1 BY MR. BASSMAN:

2 Q. Well, how old are you, sir?

3 A. 51 and a half. Almost 52.

4 Q. Okay. So if you decided to  
5 take a job with a new employer today,  
6 under the cash balance plan you could  
7 receive your current account balance  
8 as a lump sum, right?

9 A. That's correct.

10 Q. If the old ACE plan were in  
11 place, if you switched to another job  
12 today, could you receive your  
13 benefits today in a lump sum payment?

14 A. No. I'm not aware, no.

15 Q. As far as you know.

16 A. As far as I know I

17 couldn't, no.

18 Q. Do you consider that to be  
19 an advantage, the ability to know  
20 that you can switch jobs and get an  
21 immediate pension payment?

22 A. Not when the number would  
23 be that much smaller. I would just  
24 wait until I'm 55 and get my ACE

1 know, I don't have those numbers.

2 BY MR. BASSMAN:

3 Q. In your experience at  
4 Conectiv, do you know anyone when  
5 they retired or left the company who  
6 turned down an option to take an  
7 immediate lump sum payment?

8 A. As in? Could you, could  
9 you rephrase?

10 Q. Sure. One of the things  
11 you mentioned in response to my  
12 hypothetical about a 30 year old  
13 employee who might want to change  
14 jobs is they might have thought that  
15 they'd be better off letting their  
16 money sit in the ACE plan and taking  
17 it at age 55 rather than taking a  
18 lump sum right now in the cash  
19 balance plan, right?

20 A. Possibly.

21 Q. I was just wondering if in  
22 your experience at Conectiv if you  
23 know anyone who when they had the  
24 chance to take an immediate lump sum

Page 171

Page 173

1 plan.

2 Q. What about for an employee  
3 who is just -- again, you know, to  
4 the best of your understanding, an  
5 employee who's 30 years old who's  
6 thinking about switching jobs after  
7 working at Conectiv for ten years.

8 Do you believe they would  
9 be in a better position under the  
10 cash balance plan than the old ACE  
11 plan?

12 MR. SAUDER: Objection

13 THE WITNESS: I can't  
14 answer that question for somebody  
15 else. I don't know. There might  
16 still be. I don't know their  
17 numbers.

18 There could be a dramatic  
19 difference between their cash balance  
20 and they're vested at ACE plan, if  
21 they're under the ACE plan.

22 So they might want to leave  
23 that in the ACE plan, too, until  
24 they're 55 and then draw it. You

1 on leaving the company turned it  
2 down.

3 A. I don't know of anybody.

4 Q. One of the things that you  
5 mentioned is a 30 year old could  
6 leave the money to sit for 25 years,  
7 right, and take their pension at 55?

8 A. If they were vested I think  
9 they can. To my knowledge.

10 Q. Assuming they're vested.

11 A. Okay.

12 Q. There is a risk, isn't  
13 there, that the 30 year old could  
14 die? We're talking under the old ACE  
15 plan.

16 A. Uh-huh.

17 Q. There's a risk, isn't  
18 there, that the 30 year old could die  
19 in the intervening years, right?

20 A. Oh, yeah.

21 Q. A risk that the plan could  
22 become insolvent?

23 A. Yes.

24 Q. A risk that the money

Page 174

Page 176

1 either Mr. 30 year old won't be here  
 2 to get the money or the money won't  
 3 be there for him in 25 years, right?  
 4 A. Yes.  
 5 Q. And you eliminate that risk  
 6 when you can get an immediate lump  
 7 sum payment under the cash balance  
 8 plan, right?  
 9 A. Yes.  
 10 Q. And there's real value to  
 11 eliminating that risk, isn't there?  
 12 MR. SAUDER: Objection.  
 13 THE WITNESS: I'm sure  
 14 there is, yes.  
 15 BY MR. BASSMAN:  
 16 Q. I mean it's a benefit of  
 17 the cash balance plan.  
 18 A. Sure.  
 19 Q. It's a positive thing.  
 20 A. Yes.  
 21 Q. Now, switching gears for a  
 22 minute. We spent a lot of time this  
 23 morning going over many documents  
 24 from '97, '98 and '99 about the cash

1 MR. SAUDER: I'm sorry.  
 2 Can you just repeat that question.  
 3 (The reporter read back the  
 4 following testimony:  
 5 "Q. And again, leaving  
 6 aside anything that may have been  
 7 discussed between you and your  
 8 attorney, looking back, is there any  
 9 information that you wished had been  
 10 orally presented to you at the two  
 11 meetings you attended about the cash  
 12 balance conversion?")  
 13 MR. SAUDER: I would just  
 14 object to the form, but if you  
 15 understand the question you can  
 16 answer.  
 17 THE WITNESS: The two  
 18 meetings I attended were very  
 19 general. So I mean, I mean the plan  
 20 wasn't even -- I don't even think the  
 21 plan was actually formalized by that  
 22 point in time. So I mean --  
 23 BY MR. BASSMAN:  
 24 Q. I'll ask it even more

Page 175

Page 177

1 balance conversion. I assume you  
 2 recall having looked through all  
 3 those this morning.  
 4 A. Yes.  
 5 Q. Do you believe that any of  
 6 those documents omitted information  
 7 that should have been included in the  
 8 notice to you?  
 9 MR. SAUDER: Again, I would  
 10 just object to the extent that it  
 11 involves any attorney-client  
 12 communication.  
 13 THE WITNESS: With the  
 14 exception of information we've  
 15 discussed, I'm not aware of any.  
 16 BY MR. BASSMAN:  
 17 Q. And again, leaving aside  
 18 anything that may have been discussed  
 19 between you and your attorney,  
 20 looking back, is there any  
 21 information that you wished had been  
 22 orally presented to you at the two  
 23 meetings you attended about the cash  
 24 balance conversion?

1 broadly then.  
 2 Other than what you may  
 3 have discussed with your attorneys,  
 4 is there anything at all that you  
 5 wish in hindsight Conectiv had  
 6 communicated to you in 1998 and 1999  
 7 about the cash balance plan  
 8 conversion?  
 9 A. Not the conversion as much  
 10 as the plan itself, because it was  
 11 presented to me, the things I  
 12 remember about the cash balance plan  
 13 presentations were the rah, rah about  
 14 how good it would be for us, and not  
 15 how there was such a dramatic  
 16 difference at, at age 55 or 65 at the  
 17 time of retirement.  
 18 So I had no, no  
 19 understanding it was that dramatic of  
 20 a difference until just a few years  
 21 ago.  
 22 Q. So in retrospect, you  
 23 wished that in 1998 and 1999 Conectiv  
 24 had given you more detail comparing

Page 178

Page 180

1 how much your benefits would be under  
2 the cash balance plan versus the old  
3 ACE plan?

4 A. That's correct.

5 Q. Anything else you wish they  
6 told you back -- anything else you  
7 wish that Conectiv had communicated  
8 to you back in 1998 and 1999?

9 MR. SAUDER: With regard to  
10 that cash balance plan?

11 BY MR. BASSMAN:

12 Q. Yes.

13 A. I'm not aware of any.

14 Q. One of the notices that we  
15 looked at earlier was dated December  
16 21, 1998. Do you recall seeing that?

17 A. Yes. The one in December,  
18 yes.

19 Q. If you had received that on  
20 December 21st, 1998, I know you can't  
21 remember whether you did or didn't,  
22 just assume that for the sake of this  
23 question, would you have acted any --  
24 let me strike that. Let me rephrase.

1 notice on December 18th as opposed to  
2 December 21st of 1998?

3 A. Probably not.

4 Q. Thanks. That's all.

5 Do you understand that one  
6 of the claims that your attorneys  
7 have asserted in their Complaint in  
8 this case is that the cash balance  
9 plan is impermissibly backloaded?

10 A. Yes.

11 Q. And what is your  
12 understanding of backloading?

13 MR. SAUDER: Again, just  
14 object just to the extent it involves  
15 any attorney-client communications.  
16 If you can answer it outside any  
17 attorney-client communications, go  
18 ahead and answer it.

19 THE WITNESS: That's how I  
20 had it explained so.

21 BY MR. BASSMAN:

22 Q. Did you before you met with  
23 attorneys at the Chimicles firm, did  
24 you have any belief one way or the

Page 179

Page 181

1 Would it have made any  
2 difference to your actions if you  
3 received that exact notice on  
4 December 18th, 1998, as opposed to  
5 December 21st, 1998?

6 MR. SAUDER: I would just  
7 object and ask that he be shown the  
8 document.

9 THE WITNESS: Yeah. Can I  
10 see the document? I'm sorry.

11 BY MR. BASSMAN:

12 Q. Sure. The document, again,  
13 if you could just read off the  
14 Exhibit Number on the bottom, Mr.  
15 Ward.

16 A. D-6.

17 Q. 6.

18 A. I'm sorry. Can you repeat  
19 the question, please.

20 Q. Sure. For the notice  
21 that's dated December 21, 1998 that  
22 was marked as Defendant's Exhibit 6,  
23 would you have acted any differently  
24 in your life if you received that

1 other as to whether the cash balance  
2 plan was impermissibly backloaded?

3 A. No.

4 Q. In your Complaint you  
5 understand that you are asking the  
6 court to appoint you as a  
7 representative of a class of other  
8 persons; correct?

9 A. Yes.

10 Q. And those other persons  
11 would be everybody else, almost  
12 everybody else that participates in  
13 the cash balance plan, right?

14 A. Yes.

15 Q. If the court were to  
16 appoint you as a class  
17 representative, what is your  
18 understanding as to your obligations  
19 to the other members of the class?

20 A. To ensure that the class is  
21 represented, the entire class.

22 Q. And when you say to ensure  
23 the entire class is represented, what  
24 does that mean to you?



Page 182

Page 184

1 A. Everybody that's in the  
2 same non grandfathered situation that  
3 I am would be covered.

4 Q. And what do you understand  
5 you're supposed to do as a class  
6 representative for them?

7 A. Provide testimony, provide  
8 documentation.

9 Q. Do you believe that you  
10 could represent a member of a class  
11 whose financial interests were  
12 different from yours as regards the  
13 cash balance plan?

14 MR. SAUDER: I'm sorry.  
15 Can you read back the question.

16 (The court reporter read  
17 back the following:

18 "Q. Do you believe that  
19 you could represent a member of a  
20 class whose financial interests were  
21 different from yours as regards the  
22 cash balance plan?"

23 MR. SAUDER: I'll object to  
24 the extent that the question is

1 to the term conflicted.

2 THE WITNESS: One person  
3 that would have a different interest  
4 than the other 19,999?

5 BY MR. BASSMAN:

6 Q. Sure. Just say one for  
7 example. Could you represent that  
8 one person?

9 A. My interest is for the  
10 class. If it's going to hurt the  
11 other 1,999, I don't know how to  
12 answer that.

13 MR. BASSMAN: I think I'm  
14 actually pretty close to wrapping up.  
15 Let's take ten minutes and I want to  
16 go over my notes.

17 RECESS

18 BY MR. BASSMAN:

19 Q. Back on the record. Just a  
20 few more questions, Mr. Fink, a  
21 couple things I just wanted to nail  
22 down.

23 A. Mr. Ward.

24 Q. Mr. Ward. I keep wanting

Page 183

Page 185

1 ambiguous. If you understand what  
2 he's asking, you can answer the  
3 question.

4 THE WITNESS: Could you  
5 explain it a little more?

6 BY MR. BASSMAN:

7 Q. Sure.

8 A. I think I know what you  
9 mean but I want to --

10 Q. Okay. You understand that  
11 as a class representative, if you're  
12 appointed, you will be prosecuting  
13 this lawsuit on behalf of thousands  
14 of other people, right?

15 A. Yes.

16 Q. And that you will have an  
17 obligation to look after their  
18 interests; correct?

19 A. Yes.

20 Q. Would you be able to  
21 advance the interests of somebody  
22 whose own financial interest  
23 conflicted with yours?

24 MR. SAUDER: I would object

1 to jump ahead to tomorrow. Do you  
2 guys look alike at all by the way?

3 A. No. No. He'll probably  
4 take offense to that.

5 Q. One of the things we talked  
6 about earlier with the Pension  
7 Estimators, the calculations that you  
8 ran which are here as Exhibit 21.

9 A. Yes.

10 Q. When you put in a request  
11 for a Pension Estimator calculation,  
12 do you recall if you put in a  
13 termination date?

14 A. Yes. And that's part of  
15 why there were so many of them run.  
16 There's like a -- I can't remember  
17 the terminology, if it's a  
18 termination date or last day worked,  
19 and then the other one is the day you  
20 draw your pension I think is the  
21 other.

22 Q. Okay. So you put in both  
23 day you want to start on your pension  
24 and the last day you worked?

Page 186

Page 188

1 A. Yes. And if you put down a  
2 different dates, the number changes.

3 Q. When you say if you put  
4 down different dates, different dates  
5 for either one?

6 A. Yes. Yes. So if I put  
7 last day worked today, but I don't  
8 draw my pension until 2020, it  
9 changes the Pension Estimator, which  
10 I don't know if it's valid even, but  
11 it allows you to do it.

12 Q. Okay.

13 A. But that's why there's a  
14 lot of numbers there.

15 Q. Another question, and this  
16 is even of the old ACE plan, and I  
17 apologize if this question is about  
18 to become a little morbid, but if  
19 there were never a cash balance plan  
20 and you were still under the old ACE  
21 plan and you were to die today, what  
22 is your understanding as to what  
23 happens to your pension benefit?

24 A. It's my understanding --

1 MR. SAUDER: Objection.

2 THE WITNESS: More

3 generous.

4 MR. BASSMAN: Okay. That's  
5 all I've got. I don't know if you  
6 have any questions.

7 MR. SAUDER: I have no  
8 questions.

9 MR. BASSMAN: You guys are  
10 reading and signing?

11 MR. SAUDER: Yes.

12 MR. BASSMAN: You are a  
13 free man.

14 (Testimony concluded at  
15 2:30 p.m.)

Page 187

Page 189

1 it's my understanding that under the  
2 cash balance plan I think my, whoever  
3 the survivor is, would get some  
4 portion or some of it.

5 Q. Leaving aside the cash  
6 balance plan. Under the old plan.

7 A. Under the ACE plan? I'm  
8 not sure.

9 Q. Did you ever read or hear  
10 anything about how under the ACE plan  
11 if you were to die before you began  
12 drawing your pension, that your  
13 surviving spouse would only get half  
14 of your pension, not the full  
15 pension?

16 A. I don't remember reading  
17 that, but I assume there is a  
18 difference because of the way the  
19 wording in the cash balance plan is,  
20 so...

21 Q. And in this respect, in  
22 terms of surviving benefits on death,  
23 is the cash balance plan more or less  
24 generous than the old ACE plan?

# 1 WITNESS CERTIFICATION

2

3 I hereby certify that I  
4 have read the foregoing transcript of  
5 my deposition testimony, and that my  
6 answers to the questions propounded,  
7 with the attached corrections or  
8 changes, if any, are true and  
9 correct.

10

11

12

13 DATE MAURICE W. WARD, JR.

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

42

43

44

45

46

47

48

49

50

51

52

53

54

55

56

57

58

59

60

61

62

63

64

65

66

67

68

69

70

71

72

73

74

75

76

77

78

79

80

81

82

83

84

85

86

87

88

89

90

91

92

93

94

95

96

97

98

99

100

101

102

103

104

105

106

107

108

109

110

111

112

113

114

115

116

117

118

119

120

121

122

123

124

125

126

127

128

129

130

131

132

133

134

135

136

137

138

139

140

141

142

143

144

145

146

147

148

149

150

151

152

153

154

155

156

157

158

159

160

161

162

163

164

165

166

167

168

169

170

171

172

173

174

175

176

177

178

179

180

181

182

183

184

185

186

187

188

189

190

191

192

193

194

195

196

197

198

199

200

201

202

203

204

205

206

207

208

209

210

211

212

213

214

215

216

217

218

219

220

221

222

223

224

225

226

227

228

229

230

231

232

233

234

235

236

237

238

239

240

241

242

243

244

245

246

247

248

249

250

251

252

253

254

255

256

257

258

259

260

261

262

263

**In The Matter Of:**

*J. Michael Charles, et al*  
v.  
*Pepco Holdings, Inc., et al*

---

*BENJAMIN D. WILKINSON*  
*April 4, 2007*

---

***REPORTING ASSOCIATES, LLC***

*Certified & Registered Professional Reporters*

*Cherry Hill -- Philadelphia -- Trenton*

*(888) 795-2323*



*www.ReportingAssociates.com*

BENJAMIN D. WILKINSON

Page 1

1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE EASTERN DISTRICT OF PENNSYLVANIA

3           -----  
4           J. MICHAEL CHARLES; MAURICE           CIVIL ACTION  
5           W. WARD, JR.; and JOSEPH I.  
6           FINK, JR.; on behalf of  
7           themselves and all others  
8           similarly situated,

9                           Plaintiffs,

10                          v.

11           PEPCO HOLDINGS, INC.;  
12           CONECTIV, and PEPCO HOLDINGS  
13           RETIREMENT PLAN,

14                           Defendants.                          NO. 05-702 (SLR)  
15           -----

16                           Philadelphia, Pennsylvania  
17                           Wednesday, April 4, 2007

18                           Transcript of testimony of BENJAMIN D.

19           WILKINSON, as taken by and before DENISE M.

20           PITCHFORD, Registered Professional Reporter and  
21           Notary Public, at the offices of PEPPER HAMILTON,  
22           LLP, 3000 Two Logan Square, 18th & Arch Streets,  
23           commencing at 10:11 o'clock in the forenoon.  
24

## BENJAMIN D. WILKINSON

Page 2

## A P P E A R A N C E S:

CHIMICLES & TIKELLIS, LLP  
 BY: JOSEPH G. SAUDER, ESQ.  
 One Haverford Centre  
 361 West Lancaster Avenue  
 Haverford, PA 19041  
 (610) 642-8500  
 JosephSauder@Chimicles.com  
 Attorneys for Plaintiffs

PEPPER HAMILTON, LLP  
 BY: KAY KYUNGSUN YU, ESQ.  
 3000 Two Logan Square  
 18th & Arch Streets  
 Philadelphia, PA 19103-2799  
 (215) 981-4188  
 yukay@pepperlaw.com  
 Attorneys for Defendants

## A L S O P R E S E N T:

BARBARA C. ALEXANDER

Page 4

(It is hereby stipulated and  
 agreed by and between counsel that sealing,  
 certification and filing are waived;

It is further stipulated and agreed  
 by and between counsel, that all objections, except  
 as to the form of the question, are reserved until  
 the time of trial.)

BENJAMIN D. WILKINSON, after having  
 been first duly sworn, was examined and testified  
 as follows:

## E X A M I N A T I O N

BY MR. SAUDER:

Q. Good morning, sir.

A. Good morning.

Q. Sir, can you state your name and  
 address?

A. Benjamin D. Wilkinson, 131 Montchan  
 Drive, Greenville, Delaware.

Q. Do you have any other addresses?

A. No.

Q. Are you currently employed?

A. No.

Q. Have you given a deposition before?

A. No.

Page 3

## I N D E X

WITNESS	PAGE
BENJAMIN D. WILKINSON	
By Mr. Sauder	4,129
By Ms. Yu	123

## E X H I B I T S

NUMBER	DESCRIPTION	PAGE
P-16	Notice of Deposition	14

## R E Q U E S T F O R P R O D U C T I O N:

PAGE	LINE
123	9

## D I R E C T I O N S N O T T O A N S W E R:

PAGE	LINE
13	10

Page 5

Q. Okay. Let me just go through some  
 brief background. I'm sure you've already  
 discussed this with your attorney, but if at any  
 point you don't understand a question that I ask, I  
 ask that you ask me to rephrase the question.  
 Otherwise, if you answer the question, I will  
 assume that you understood the question.

A. Got you.

Q. Also, I ask that you give all of  
 your answers verbally, so that the court reporter  
 can take down your answers. And try and refrain  
 from nodding your head yes or no. If you just give  
 verbal answers.

A. Okay.

Q. And I just ask that you let me  
 finish my question before you answer the question,  
 and I will do the same for you, so that the court  
 reporter can take everything down, okay?

If at any point in this deposition  
 you need a break, just let us know and we will  
 accommodate you. I just ask that if there's a  
 question pending, that you answer the question  
 before we take a break.

Can you tell me what your

2 (Pages 2 to 5)

BENJAMIN D. WILKINSON

<p style="text-align: right;">Page 6</p> <p>1 educational history is after high school?</p> <p>2 A. I went to Hobart College, and then I</p> <p>3 got an MBA from the University of Buffalo.</p> <p>4 Q. And did there come a time when you</p> <p>5 were employed by Conectiv?</p> <p>6 A. Yes.</p> <p>7 Q. And when was that?</p> <p>8 A. The late '90s.</p> <p>9 Q. When exactly?</p> <p>10 A. I think it was '96 through '99.</p> <p>11 Q. When was your final day at Conectiv?</p> <p>12 A. It was in the fall of '99, I think.</p> <p>13 Q. Going backwards from 1996, where did</p> <p>14 you work prior to Conectiv?</p> <p>15 A. DuPont.</p> <p>16 Q. And when were you at DuPont?</p> <p>17 A. When?</p> <p>18 Q. Yeah, what time frame.</p> <p>19 A. 31 years.</p> <p>20 Q. And what did you do at DuPont?</p> <p>21 A. Human resource work, compensation of</p> <p>22 benefits.</p> <p>23 Q. Is that what you did the entire time</p> <p>24 you were at DuPont?</p>	<p style="text-align: right;">Page 8</p> <p>1 A. No.</p> <p>2 Q. At any point during the time that</p> <p>3 you were at DuPont, did you have decision-making</p> <p>4 over the pension plan at DuPont?</p> <p>5 A. No.</p> <p>6 Q. Did they have a cash balance plan at</p> <p>7 DuPont?</p> <p>8 A. No.</p> <p>9 Q. When you -- did you leave DuPont to</p> <p>10 go to Conectiv?</p> <p>11 A. I retired from DuPont.</p> <p>12 Q. And were you retired for some period</p> <p>13 of time before you were hired at Conectiv?</p> <p>14 A. One week.</p> <p>15 Q. And how is it that you were hired at</p> <p>16 Conectiv?</p> <p>17 A. Conectiv was going, or actually</p> <p>18 Delmarva was in the process of purchasing Atlantic</p> <p>19 City Electric, and the manager of compensation and</p> <p>20 benefits was assigned to the transition team for</p> <p>21 the merger, so they had an opening and they came to</p> <p>22 DuPont looking for someone that was recently</p> <p>23 retired that might take the job as a contractor.</p> <p>24 Q. And who did you meet with or</p>
<p style="text-align: right;">Page 7</p> <p>1 A. No. I had a stint in the</p> <p>2 International Department and a stint in Labor</p> <p>3 Relations, and we were in three different plant</p> <p>4 sites.</p> <p>5 Q. And during the time that you were in</p> <p>6 compensation and benefits, how long a time period</p> <p>7 were you in that department?</p> <p>8 A. On and off, probably about 10 years.</p> <p>9 Q. And when you left DuPont, is that</p> <p>10 the department you left from?</p> <p>11 A. I left from Human Resources, yes.</p> <p>12 Q. What was your official title when</p> <p>13 you left?</p> <p>14 A. Personnel manager.</p> <p>15 Q. And in the capacity in Human</p> <p>16 Resources, what duties and responsibilities did you</p> <p>17 have at DuPont?</p> <p>18 A. As a personnel manager, we handled</p> <p>19 the personnel issues that went with the staff</p> <p>20 departments, pay raises, bonus administration,</p> <p>21 discipline, advice on benefits, counsel to the</p> <p>22 management.</p> <p>23 Q. Did you make decisions regarding the</p> <p>24 pension plan at DuPont?</p>	<p style="text-align: right;">Page 9</p> <p>1 interview with at that time with Conectiv?</p> <p>2 A. Don Cain.</p> <p>3 Q. Anyone else?</p> <p>4 A. I think I met with the then manager,</p> <p>5 Moira Donohue, but it was mostly with Don Cain.</p> <p>6 Q. Did you know Don Cain prior to</p> <p>7 interviewing?</p> <p>8 A. No.</p> <p>9 Q. And what was the arrangement that</p> <p>10 day? You said, you came on as a contract employee?</p> <p>11 A. Yes.</p> <p>12 Q. And what was the arrangement that</p> <p>13 they set up for you to come on Conectiv as a</p> <p>14 contract employee?</p> <p>15 A. I signed up for a year.</p> <p>16 Q. And then what happened at the end of</p> <p>17 that year?</p> <p>18 A. It got extended to another year and</p> <p>19 then a third year.</p> <p>20 Q. Each time it got extended for a full</p> <p>21 year?</p> <p>22 A. As I recall.</p> <p>23 Q. And who did you negotiate with at</p> <p>24 the end of the year?</p>

3 (Pages 6 to 9)



BENJAMIN D. WILKINSON

<p style="text-align: right;">Page 10</p> <p>1 A. Don Cain.</p> <p>2 Q. What was his position at the time?</p> <p>3 A. Vice President of Human Resources.</p> <p>4 Q. You left in the fall of 1999, is</p> <p>5 that correct?</p> <p>6 A. I think so, yeah.</p> <p>7 Q. Did they try and keep you on for</p> <p>8 another year?</p> <p>9 A. No, that was the end.</p> <p>10 Q. The end of what?</p> <p>11 A. The end of the contract agreements.</p> <p>12 Q. Was there a reason that you left at</p> <p>13 that time?</p> <p>14 A. Yeah. They were down-sizing the</p> <p>15 human resource function and it didn't seem right to</p> <p>16 downsize permanent employees when you had</p> <p>17 contractors on the role.</p> <p>18 Q. Did you come there for a specific</p> <p>19 reason, to accomplish a specific goal?</p> <p>20 A. They were going through the</p> <p>21 acquisition of Atlantic City Electric. That was</p> <p>22 the reason they needed somebody.</p> <p>23 Q. And what was your understanding of</p> <p>24 what you would be responsible for when you first</p>	<p style="text-align: right;">Page 12</p> <p>1 A. Late '90s is the best I can...</p> <p>2 Q. What, if anything, did you do to</p> <p>3 prepare for the deposition today?</p> <p>4 A. I met with the lawyers here for a</p> <p>5 couple of hours last week.</p> <p>6 Q. Okay. And who did you meet with,</p> <p>7 without telling me what you discussed, but who did</p> <p>8 you meet with?</p> <p>9 A. Barak.</p> <p>10 MS. YU: Barak Bassman.</p> <p>11 THE WITNESS: Barak Bassman.</p> <p>12 BY MR. SAUDER:</p> <p>13 Q. Anyone else?</p> <p>14 A. Barbara.</p> <p>15 Q. Okay. And did you review any</p> <p>16 documents?</p> <p>17 A. Yes.</p> <p>18 Q. And do you remember what documents</p> <p>19 you reviewed?</p> <p>20 MS. YU: I'm going to object to that</p> <p>21 question.</p> <p>22 BY MR. SAUDER:</p> <p>23 Q. Do you remember how many documents</p> <p>24 you reviewed?</p>
<p style="text-align: right;">Page 11</p> <p>1 signed up for the initial first year?</p> <p>2 A. Compensation and benefits.</p> <p>3 Q. Did you understand that you would be</p> <p>4 responsible for overseeing any change in the</p> <p>5 pension plan?</p> <p>6 A. Yes.</p> <p>7 Q. And overall, any changes that would</p> <p>8 happen with regard to medical coverage, health</p> <p>9 insurance?</p> <p>10 A. Yes.</p> <p>11 Q. Had the merger taken place at the</p> <p>12 time you first arrived?</p> <p>13 A. No.</p> <p>14 Q. So, you were initially hired by</p> <p>15 Delmarva?</p> <p>16 A. Yes.</p> <p>17 Q. Conectiv was not an entity at that</p> <p>18 time?</p> <p>19 A. Not even named.</p> <p>20 Q. Did you play any role in the</p> <p>21 negotiation of the merger?</p> <p>22 A. No.</p> <p>23 Q. Do you remember when the merger took</p> <p>24 place?</p>	<p style="text-align: right;">Page 13</p> <p>1 A. Here?</p> <p>2 Q. At any time in preparation for this</p> <p>3 deposition.</p> <p>4 MS. YU: I'm going to object to him</p> <p>5 answering the volume of documents that he reviewed.</p> <p>6 That's work product.</p> <p>7 BY MR. SAUDER:</p> <p>8 Q. Do you remember what types of</p> <p>9 documents you reviewed?</p> <p>10 MS. YU: I'm going to instruct the</p> <p>11 witness not to answer that question.</p> <p>12 BY MR. SAUDER:</p> <p>13 Q. Approximately how long did you meet</p> <p>14 with the attorneys here?</p> <p>15 A. Two to three hours.</p> <p>16 Q. Did you meet with anyone else?</p> <p>17 A. No.</p> <p>18 Q. Are you represented by counsel</p> <p>19 today?</p> <p>20 A. Yes.</p> <p>21 Q. Indicating for the record, Kay Yu.</p> <p>22 Prior to meeting with counsel last week, had you</p> <p>23 ever talked to counsel regarding this case?</p> <p>24 A. No.</p>

4 (Pages 10 to 13)

BENJAMIN D. WILKINSON

<p style="text-align: right;">Page 14</p> <p>1 Q. I will show you what we've marked as  2 Plaintiffs Exhibit 16.  3 (Exhibit P-16 marked for  4 identification.)  5 BY MR. SAUDER:  6 Q. I'm showing you what has been marked  7 as Plaintiff's 16. If you could take a look at  8 that document and tell me if you've seen that  9 before today's deposition. Have you seen this  10 document prior to today's deposition?  11 A. Not the top two pages.  12 MR. SAUDER: And just indicating for  13 the record, Plaintiff's Exhibit 16 is the Notice of  14 Deposition that's painted for today's deposition  15 with an attached exhibit requesting certain  16 documents.  17 BY MR. SAUDER:  18 Q. Other than the top two pages, did  19 you see the other pages?  20 A. Yes.  21 Q. Pages 3 through 7?  22 A. Actually, they look a little  23 different.  24 Q. Were you served with a subpoena at</p>	<p style="text-align: right;">Page 16</p> <p>1 documents that were requested in this subpoena?  2 A. I had absolutely no documents.  3 Q. Okay. At the time you were hired by  4 Conectiv and interviewed with Don Cain, you said  5 Conectiv itself hadn't even been in existence,  6 correct?  7 A. Correct.  8 Q. And the name itself hadn't been in  9 existence, correct?  10 A. Correct.  11 Q. When Don Cain interviewed you, did  12 he -- did you have an understanding that a cash  13 balance plan would be -- a cash balance plan would  14 be implemented at Conectiv?  15 A. No.  16 Q. Did you understand there would be  17 changes in the pension plan?  18 A. Yes.  19 Q. And what was your conversation  20 regarding the changes that would happen with regard  21 to a pension plan?  22 A. We were going to hire outside comp  23 and benefits consultants to help us decide what to  24 put in place.</p>
<p style="text-align: right;">Page 15</p> <p>1 your home?  2 A. My wife was.  3 Q. Okay. And prior to being served  4 with the subpoena, did you know anything about a  5 litigation involving the cash balance plan at  6 Conectiv?  7 A. No.  8 Q. When you received this subpoena, did  9 you talk to anybody about the case other than your  10 attorneys?  11 A. My wife.  12 Q. Okay. Anyone else?  13 A. No.  14 Q. Did you talk to Don Cain?  15 A. No.  16 Q. Have you talked to him since you  17 left the company?  18 A. No.  19 Q. Did you talk to anyone at Pepco?  20 A. Barbara.  21 Q. Okay. On Page 6 and 7, this  22 subpoena requests certain documents?  23 A. Yes.  24 Q. Did you make an effort to locate any</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. And who told you that?  2 A. I believe Don Cain did.  3 Q. And did you know who you were going  4 to hire?  5 A. I don't think so at that point.  6 Q. Did you have input on who would be  7 hired?  8 A. Yes.  9 Q. And who did you ultimately hire?  10 A. Watson Wyatt.  11 Q. And was that your choice?  12 A. Not my decision.  13 Q. But did you suggest Watson Wyatt?  14 A. Yes.  15 Q. Why was that?  16 A. They appeared to be very capable.  17 Q. Had you worked with them at DuPont?  18 A. No.  19 Q. Did you meet with or interview other  20 actuarial firms?  21 A. Yes.  22 Q. Who did you meet with?  23 A. The one I remember was Fred Cook.  24 Q. What was your understanding from Don</p>

5 (Pages 14 to 17)

BENJAMIN D. WILKINSON

<p style="text-align: right;">Page 18</p> <p>1 Cain or anyone at Conectiv -- and when I say  2 Conectiv, I also mean Delmarva who you were  3 ultimately hired by -- of why they were looking to  4 change the pension plan at that time?  5 A. It was going to be a new company and  6 it was going to be, not only a regulated industry,  7 but non-regulated businesses. And I knew they were  8 going to have to move people back and forth between  9 regulated and non-regulated, and that the company  10 would be entirely different. It wouldn't be just a  11 utility anymore. So, they wanted to design a  12 benefit plan that would fit general industry, not  13 utility.  14 Q. When you say "benefit plan," how do  15 you define benefit plans?  16 A. The benefit plans, vacation,  17 holidays, health, pension, savings plan, 401(k).  18 Q. Was there anything specifically  19 discussed about the pension plan?  20 A. At the beginning?  21 Q. Yes.  22 A. No.  23 Q. Did you meet with Watson Wyatt prior  24 to hiring them?</p>	<p style="text-align: right;">Page 20</p> <p>1 compensation person, and I don't remember the  2 benefits person.  3 Q. Did John Candelaro and David  4 Speir -- ultimately, were they the two that were  5 the main contact at Watson Wyatt --  6 A. Yes.  7 Q. -- through this change?  8 A. Yes.  9 Q. Do you remember how many meetings  10 there would have been between Conectiv and Watson  11 Wyatt before they were ultimately hired?  12 A. I don't recall.  13 Q. Do you know if the compensation plan  14 was specifically discussed at any of these meetings  15 before Watson Wyatt was hired?  16 A. Probably.  17 Q. And do you know what was discussed?  18 A. We had to give them an understanding  19 of what each company had so they had some  20 grounding.  21 Q. And did you tell them what you were  22 looking to accomplish by changing the pension plan?  23 A. Just the competitive general  24 industry pension plan.</p>
<p style="text-align: right;">Page 19</p> <p>1 A. We interviewed them.  2 Q. How many times did you meet with  3 them?  4 A. I don't recall.  5 Q. Did you personally meet with them?  6 A. Yes.  7 Q. Do you know who you met with?  8 A. I remember two. John Candelaro, I  9 think it was.  10 Q. Do you know how to spell that?  11 A. No. And David Speir. John was the  12 lead. And there was a third person that  13 specialized in health care, and I don't recall her  14 name.  15 Q. Who would have been at those  16 meetings from Conectiv?  17 A. At what point?  18 Q. Initially.  19 A. Probably my counterpart from  20 Atlantic and maybe Don Cain. Certainly, Don Cain.  21 Q. Who was your counterpart from  22 Atlantic?  23 A. Her first name was Maryann, and I  24 can't remember her last name. She was the</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. And what does that mean to you?  2 A. It means it would be competitive  3 versus general industry versus just utility.  4 Q. And when you say "competitive," how  5 do you define that?  6 A. It would provide a benefit that was  7 competitive.  8 Q. Can you define that?  9 A. Not at the top, not at the bottom,  10 somewhere in the upper quartile maybe.  11 Q. At any point during those meetings  12 prior to actually hiring Watson Wyatt, was the cash  13 balance discussed, that a cash balance plan would  14 be implemented?  15 A. I don't think so.  16 Q. Do you know how long a process went  17 on from the initial interview with Watson Wyatt  18 until they were ultimately brought on?  19 A. I don't remember.  20 Q. Would it have been less than six  21 months?  22 A. That's likely.  23 Q. Less than three months?  24 A. From their first discussions with</p>

6 (Pages 18 to 21)

BENJAMIN D. WILKINSON

<p style="text-align: right;">Page 22</p> <p>1 us --</p> <p>2 Q. Right.</p> <p>3 A. -- until they were hired?</p> <p>4 Q. Yes.</p> <p>5 A. Probably less than three.</p> <p>6 Q. And were you involved with the</p> <p>7 initial discussions or had Conectiv already been</p> <p>8 having discussions with actuarial firms prior to</p> <p>9 you being hired?</p> <p>10 A. I don't know what they had done</p> <p>11 before I got there.</p> <p>12 Q. Was there any indication, to you,</p> <p>13 when it was decided that Watson Wyatt would be one</p> <p>14 of the firms that would be interviewed, that they</p> <p>15 had already talked to them?</p> <p>16 A. I don't think so.</p> <p>17 Q. Okay. Do you know if Don Cain had</p> <p>18 any prior relationships with Watson Wyatt?</p> <p>19 A. I don't know.</p> <p>20 Q. Do you know if Conectiv or Delmarva</p> <p>21 had any prior relationship with Watson Wyatt?</p> <p>22 A. I don't know.</p> <p>23 Q. Who had the ultimate authority to</p> <p>24 make the decision to hire Watson Wyatt?</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. I'm showing you what has been</p> <p>2 previously marked as Defense Exhibit 1. I'm</p> <p>3 showing you what has been previously marked as</p> <p>4 Defense Exhibit 1. Do you recognize this document?</p> <p>5 A. Yes.</p> <p>6 Q. What is this document?</p> <p>7 A. It's a communication document to</p> <p>8 employees about upcoming benefits, I believe.</p> <p>9 Q. And in the upper --</p> <p>10 A. And pay.</p> <p>11 Q. Excuse me?</p> <p>12 A. And compensation.</p> <p>13 Q. In the upper right-hand corner of</p> <p>14 the document, it's dated October 13th, 1997?</p> <p>15 A. Correct.</p> <p>16 Q. That was prior to the merger,</p> <p>17 correct?</p> <p>18 A. I believe so.</p> <p>19 Q. The merger took place sometime March</p> <p>20 of 1998, is that your recollection?</p> <p>21 A. I just don't remember the exact</p> <p>22 date.</p> <p>23 Q. Okay. Sometime early 1998?</p> <p>24 A. That sounds about right. I just</p>
<p style="text-align: right;">Page 23</p> <p>1 A. I recall it's probably Don Cain and</p> <p>2 I -- it was probably Don Cain.</p> <p>3 Q. Do you know what time frame they</p> <p>4 would have been hired?</p> <p>5 A. I don't understand.</p> <p>6 Q. You were brought on in 1996?</p> <p>7 A. I think, yeah.</p> <p>8 Q. Do you know in what time frame,</p> <p>9 relative to that, that they ultimately would have</p> <p>10 been hired and brought on to implement these</p> <p>11 changes?</p> <p>12 A. I don't recall.</p> <p>13 Q. Did you hire any other consultants</p> <p>14 with regard to changing the benefits plan at</p> <p>15 Conectiv?</p> <p>16 A. No.</p> <p>17 Q. Did your counterpart from ACE have</p> <p>18 input into who was ultimately hired as a</p> <p>19 consultant?</p> <p>20 A. I believe they had input, but not</p> <p>21 the final say.</p> <p>22 Q. It would have been the Delmarva's</p> <p>23 side that had the final say?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 25</p> <p>1 can't remember the date.</p> <p>2 Q. Okay. Do you know who prepared this</p> <p>3 document?</p> <p>4 A. I believe it was the public</p> <p>5 relations people in Delmarva.</p> <p>6 Q. Did you play any role in preparing</p> <p>7 this document?</p> <p>8 A. Probably proofread, but not</p> <p>9 preparing.</p> <p>10 Q. So, this is something that the</p> <p>11 Public Relations Department and Delmarva would have</p> <p>12 typed up and you would have looked at and</p> <p>13 proofread?</p> <p>14 A. Yes.</p> <p>15 Q. And do you remember if you made any</p> <p>16 corrections to what they prepared?</p> <p>17 A. I don't remember.</p> <p>18 Q. Do you know if anybody else would</p> <p>19 have had any input in the document?</p> <p>20 A. It's possible that Don Cain may have</p> <p>21 reviewed this. I just don't remember.</p> <p>22 Q. What was your title at the time?</p> <p>23 A. Manager of Compensation and</p> <p>24 Benefits.</p>

7 (Pages 22 to 25)

BENJAMIN D. WILKINSON

<p style="text-align: right;">Page 26</p> <p>1 Q. Were you in any way involved in --</p> <p>2 personally, did you have any pension plan at</p> <p>3 Conectiv when you were hired?</p> <p>4 A. Was I in a pension plan?</p> <p>5 Q. At Conectiv.</p> <p>6 A. No.</p> <p>7 Q. You were in a pension plan from</p> <p>8 DuPont?</p> <p>9 A. DuPont.</p> <p>10 Q. So, that wasn't part of your deal,</p> <p>11 that you would be involved in any type of pension</p> <p>12 plan?</p> <p>13 A. No.</p> <p>14 Q. So, prior to you proofreading this,</p> <p>15 you would not have been involved in any of the</p> <p>16 substance that went into this, that would have been</p> <p>17 done by the public relations people at Delmarva?</p> <p>18 A. Yes.</p> <p>19 Q. Did you know how big that department</p> <p>20 was?</p> <p>21 A. Not big, but maybe five or six</p> <p>22 people.</p> <p>23 Q. Do you know who the head was of that</p> <p>24 department?</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. Right. They would all be -- all of</p> <p>2 these changes would affect them, correct?</p> <p>3 A. Yes.</p> <p>4 Q. Do you know whether this was --</p> <p>5 strike that.</p> <p>6 Do you know how this was</p> <p>7 disseminated?</p> <p>8 A. This?</p> <p>9 Q. Yes.</p> <p>10 A. I think they were just produced in</p> <p>11 bulk and then distributed to the business units,</p> <p>12 who got them to the management, who gave them the</p> <p>13 employees.</p> <p>14 Q. Is it possible they would have just</p> <p>15 been laying around for people to pick up?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know whether that would have</p> <p>18 taken place at just Delmarva?</p> <p>19 A. I assumed it took place in the</p> <p>20 non-represented population in ACE too, but I wasn't</p> <p>21 there to see it.</p> <p>22 Q. You have no personal knowledge of</p> <p>23 that, correct?</p> <p>24 A. No.</p>
<p style="text-align: right;">Page 27</p> <p>1 A. Mike something or other. I can't</p> <p>2 remember his last name.</p> <p>3 Q. It says "Total Rewards Communicate</p> <p>4 Conectiv." What does "Total Rewards," what does</p> <p>5 that mean to you?</p> <p>6 A. That was a phrase used to describe</p> <p>7 the entire package of compensation and benefits.</p> <p>8 And total rewards was something that the management</p> <p>9 picked.</p> <p>10 Q. When you say "entire package," what</p> <p>11 would be included in that entire package?</p> <p>12 A. All of the pay scales, all of the</p> <p>13 incentive plans, all of the benefits, the flexible</p> <p>14 benefits.</p> <p>15 Q. The health benefits?</p> <p>16 A. Yes.</p> <p>17 Q. Holidays?</p> <p>18 A. Yes.</p> <p>19 Q. Vacation?</p> <p>20 A. Yep.</p> <p>21 Q. And these were all new -- these were</p> <p>22 all changes that were going to take place for</p> <p>23 employees at both Delmarva and ACE, correct?</p> <p>24 A. For the non-represented people.</p>	<p style="text-align: right;">Page 29</p> <p>1 Q. On the second column on the first</p> <p>2 page towards the bottom, the middle of that</p> <p>3 paragraph, it says, there's a reference, "A new</p> <p>4 pension plan will replace the old, quote, final</p> <p>5 pay, end quote, plans with individual portable</p> <p>6 accounts."</p> <p>7 Do you see that reference?</p> <p>8 A. Uh-huh. Yes.</p> <p>9 Q. At that time, did you know that it</p> <p>10 would be a cash balance plan?</p> <p>11 A. I believe we did, because we kind of</p> <p>12 described the basic structure of a cash balance</p> <p>13 plan in this paragraph.</p> <p>14 Q. Do you remember when you were first</p> <p>15 aware that it would be a cash balance plan?</p> <p>16 A. No.</p> <p>17 Q. Do you remember who suggested that</p> <p>18 initially?</p> <p>19 A. I believe it was Watson Wyatt.</p> <p>20 Q. And you would have been involved in</p> <p>21 those meetings?</p> <p>22 A. Yes.</p> <p>23 Q. On the next page, at the top, first</p> <p>24 paragraph, it says, "When we will know the details</p>

8 (Pages 26 to 29)



BENJAMIN D. WILKINSON

<p style="text-align: right;">Page 30</p> <p>1 of the new total rewards program?" And then it  2 states, "The total rewards transition team is  3 continuing to work out the details." And then the  4 sentence goes on. "The transition team," what was  5 the transition team?  6 A. That was a team that had both  7 Delmarva and ACE employees on it that was given the  8 responsibility of managing the transition between  9 two separate companies into one Conectiv.  10 Q. And were you part of that team?  11 A. On and off.  12 Q. And what was your role with regard  13 to that team?  14 A. Basically, it was to do the  15 compensation and benefits work. Not to worry about  16 the structure of the merger.  17 Q. Do you know how big that transition  18 team was?  19 A. Oh. I think, depending on the topic  20 of the meeting, the composition would float. From  21 an employer relations standpoint, that was the only  22 piece we were worried about. We weren't worried  23 about buildings and structure and location.  24 Q. Was it more than 50 people?</p>	<p style="text-align: right;">Page 32</p> <p>1 correct?  2 A. Yes.  3 Q. And the same thing with regard to  4 how this would have been disseminated, it's  5 possible this would have been laying around for  6 employees to pick up a copy?  7 A. Probably, yes.  8 Q. Was there anyone that was on the  9 total rewards team that was specifically tasked  10 with communications to employees?  11 A. Yes.  12 Q. And do you know who that was?  13 A. Wally Judd.  14 Q. J-u-d-d?  15 A. Yes.  16 Q. And do you know what his title was?  17 A. I don't remember.  18 Q. Was he a Delmarva employee?  19 A. Yes.  20 Q. And was he still there when you  21 left?  22 A. Yes.  23 Q. In the same capacity?  24 A. Yes.</p>
<p style="text-align: right;">Page 31</p> <p>1 A. Oh, never that big.  2 Q. Less than 25 people?  3 A. Probably.  4 Q. Was there someone that was the head  5 of the entire transition team?  6 A. Well, I guess ultimately the  7 Chairman of the Board was in charge of it, but from  8 an employee relations standpoint, Don Cain was  9 possibly the hit man.  10 Q. I'm done with that document. I'll  11 show you what's been previously marked as Defense  12 Exhibit 2. I'm showing you what's been marked D-2.  13 It's also titled EMerging Times. It's dated  14 October 20, 1997. Do you recognize this document?  15 A. I recognize the structure of it.  16 EMerging Times was kind of the banner under which  17 all of these communications were done. The  18 particular words in here don't ring any bells.  19 Q. Do not ring any bells?  20 A. If I took time to read the whole  21 thing, I probably would. But just on the face of  22 it, it doesn't look that familiar.  23 Q. Okay. And EMerging Times, this is  24 similar to the document we just looked at, D-1,</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. Did you have much interaction with  2 him?  3 A. Yes.  4 Q. Is this document, a document that  5 you, same thing, that it would have been prepared  6 by someone in public relations and you would have  7 proofread, or is this a document you may not have  8 even proofread?  9 A. Oh, I would have proofread this one.  10 It's got my name in it.  11 Q. Other than that, would it have been  12 the same as D-1, public relations would have  13 prepared the document for you to proofread?  14 A. Yes.  15 Q. If you turn to the second page of  16 this document, first full paragraph. It states,  17 "Can you tell us more about the new pension  18 arrangement?" The next sentence is, "The design of  19 the plan is not yet finalized, but we know it will  20 be what's called a 'cash balance' plan."  21 At that time, October 20th, 1997,  22 had the decision been made that it would be a cash  23 balance plan?  24 A. I believe so. But the particular</p>

9 (Pages 30 to 33)



BENJAMIN D. WILKINSON

<p style="text-align: right;">Page 34</p> <p>1 design elements were not final.</p> <p>2 Q. Okay. Other than Watson Wyatt --</p> <p>3 I'm talking about outside consultants other than</p> <p>4 Watson Wyatt. Did anyone else play a role in</p> <p>5 making a decision at that time that Conectiv would</p> <p>6 be implementing what would be called a cash balance</p> <p>7 plan?</p> <p>8 MS. YU: Objection as to form.</p> <p>9 MR. SAUDER: You can answer.</p> <p>10 MS. YU: You can answer.</p> <p>11 THE WITNESS: Please repeat.</p> <p>12 BY MR. SAUDER:</p> <p>13 Q. Okay. With regard to outside</p> <p>14 consultants, anyone other than Watson Wyatt that</p> <p>15 would have played a role in deciding that Conectiv</p> <p>16 would be implementing a cash balance plan at that</p> <p>17 time?</p> <p>18 MS. YU: Objection. Objection as to</p> <p>19 form.</p> <p>20 THE WITNESS: Not that I recall.</p> <p>21 BY MR. SAUDER:</p> <p>22 Q. Who was specifically tasked with</p> <p>23 working on the cash balance plan from Conectiv?</p> <p>24 A. There was a benefits consultant</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. Do you know if he was given a</p> <p>2 severance package?</p> <p>3 A. Probably was.</p> <p>4 Q. Do you know if it was voluntary or</p> <p>5 involuntary?</p> <p>6 A. Don't remember.</p> <p>7 Q. Is there a significant amount of</p> <p>8 down-sizing going on at this time?</p> <p>9 A. No.</p> <p>10 Q. No, I'm sorry. At the time around</p> <p>11 the merger?</p> <p>12 A. Yes.</p> <p>13 Q. In both ACE and Delmarva?</p> <p>14 A. Yes.</p> <p>15 Q. And I used the term "significant."</p> <p>16 How would you define "significant amount of</p> <p>17 down-sizing"?</p> <p>18 A. Well, it was significant in that</p> <p>19 there were a lot of duplicate functions, so you had</p> <p>20 to eliminate a lot of that interface. And these</p> <p>21 aren't big groups of people. There might have</p> <p>22 been, I don't know, 50 or 60 total in the function</p> <p>23 across both companies, but I don't remember</p> <p>24 specific numbers on how many left.</p>
<p style="text-align: right;">Page 35</p> <p>1 named Alan Beattie, who was the corporate pension</p> <p>2 person.</p> <p>3 Q. Was he a Delmarva employee at the</p> <p>4 time you were hired?</p> <p>5 A. Yes.</p> <p>6 Q. And do you know how long he had been</p> <p>7 with the company?</p> <p>8 A. No.</p> <p>9 Q. Do you know if he was a contract</p> <p>10 employee or was he --</p> <p>11 A. No, he was a regular employee.</p> <p>12 Q. And was he still there when you</p> <p>13 left?</p> <p>14 A. No.</p> <p>15 Q. Do you know when he left the</p> <p>16 company?</p> <p>17 A. About a year before I did, I think.</p> <p>18 Maybe six months.</p> <p>19 Q. Would he have left prior to January</p> <p>20 1999?</p> <p>21 A. I don't remember.</p> <p>22 Q. Do you know why he left the company?</p> <p>23 A. They were down-sizing the human</p> <p>24 resources function.</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. But there was significant</p> <p>2 down-sizing in all different departments in</p> <p>3 Delmarva and ACE around that time, correct?</p> <p>4 A. Yes.</p> <p>5 Q. Do you know percentage-wise what</p> <p>6 percentage of Delmarva employees would have been</p> <p>7 downsized around that time?</p> <p>8 A. No.</p> <p>9 Q. How about ACE, same question?</p> <p>10 A. No.</p> <p>11 Q. Do you know if more people were</p> <p>12 downsized at ACE proportionately as opposed to</p> <p>13 Delmarva?</p> <p>14 A. I don't know that.</p> <p>15 Q. Did you play any role in that?</p> <p>16 A. No.</p> <p>17 Q. And when did that begin, that</p> <p>18 process of down-sizing in relation to when you were</p> <p>19 hired?</p> <p>20 A. Probably nearer the end of my three</p> <p>21 years there. The first year, year and a half was</p> <p>22 pretty busy with just doing the merger.</p> <p>23 Q. Is it fair to say that it would have</p> <p>24 taken place sometime in, at least mid to late 1998?</p>

10 (Pages 34 to 37)

BENJAMIN D. WILKINSON

<p style="text-align: right;">Page 38</p> <p>1 A. I can't be sure.</p> <p>2 Q. Well, you left in the fall of 1999,</p> <p>3 correct?</p> <p>4 A. Correct.</p> <p>5 Q. I will show you what's been</p> <p>6 previously marked as Plaintiff's Exhibit 2. Take a</p> <p>7 look at Plaintiff's Exhibit 2. Tell me if you</p> <p>8 recognize that document after you've had an</p> <p>9 opportunity to review it.</p> <p>10 A. I recognize it, yes.</p> <p>11 Q. And what is this document?</p> <p>12 A. It's the Minutes of the Personnel</p> <p>13 and Compensation Committee Meeting on April 23rd,</p> <p>14 1998.</p> <p>15 Q. Have you seen this document prior to</p> <p>16 today?</p> <p>17 A. Yes.</p> <p>18 Q. And when did you see it?</p> <p>19 A. The last time I saw it, it was</p> <p>20 earlier. The last time I was in here.</p> <p>21 Q. Prior to that, did you see it?</p> <p>22 A. Probably on April 23rd, 1998.</p> <p>23 Q. That was the date of the meeting,</p> <p>24 correct?</p>	<p style="text-align: right;">Page 40</p> <p>1 A. This was not a board meeting.</p> <p>2 Q. I mean, had you been to other</p> <p>3 compensation committee meetings?</p> <p>4 A. I don't remember.</p> <p>5 Q. Don Cain was also present?</p> <p>6 A. Yes.</p> <p>7 Q. And what was the purpose of this</p> <p>8 specific meeting?</p> <p>9 A. I guess it was just to brief them on</p> <p>10 what all the thinking was on the compensation and</p> <p>11 benefits plans and to get their approval or their</p> <p>12 blessing before it went to the full board. I can't</p> <p>13 remember if it went to the full board. Maybe the</p> <p>14 comp committee just did it.</p> <p>15 Q. And who made the presentation at</p> <p>16 this meeting?</p> <p>17 A. I think it was both Don Cain and</p> <p>18 myself.</p> <p>19 Q. Prior to the meeting, did anyone</p> <p>20 help you and Don Cain prepare for the meeting?</p> <p>21 A. I don't think so.</p> <p>22 Q. The first full paragraph, last</p> <p>23 sentence states, "She then referred to materials</p> <p>24 that had been previously distributed to the</p>
<p style="text-align: right;">Page 39</p> <p>1 A. Yes.</p> <p>2 Q. And these are the minutes from the</p> <p>3 meeting?</p> <p>4 A. Yes.</p> <p>5 Q. And you would have seen it on the</p> <p>6 same day?</p> <p>7 A. No. Probably a day or two after. I</p> <p>8 imagine it was written after the meeting.</p> <p>9 Q. And what would be the purpose of you</p> <p>10 seeing a copy of the minutes of the meeting shortly</p> <p>11 thereafter the meeting?</p> <p>12 A. I guess just to get a copy.</p> <p>13 Q. Okay. Not to make corrections or</p> <p>14 anything like that?</p> <p>15 A. No, no.</p> <p>16 Q. And you -- were you present at this</p> <p>17 meeting?</p> <p>18 A. Yes.</p> <p>19 Q. And what was the purpose that you</p> <p>20 were present at this meeting?</p> <p>21 A. Because I was involved in the design</p> <p>22 of compensation and benefits.</p> <p>23 Q. Prior to this April 23rd, 1998</p> <p>24 meeting, had you been to other board meetings?</p>	<p style="text-align: right;">Page 41</p> <p>1 committee members."</p> <p>2 Do you see that sentence?</p> <p>3 A. Yes.</p> <p>4 Q. And then if you flip to the back</p> <p>5 portion of this, the Bates stamp, which is the</p> <p>6 number that's in the bottom right-hand corner is</p> <p>7 1 -- the last four numbers are 1588. Do you see</p> <p>8 that?</p> <p>9 A. This one?</p> <p>10 Q. Correct.</p> <p>11 A. Yes.</p> <p>12 Q. Is that the material that's</p> <p>13 referenced in that sentence?</p> <p>14 A. I believe so.</p> <p>15 Q. That was the material that was</p> <p>16 handed out to the compensation committee?</p> <p>17 A. Yes.</p> <p>18 Q. The next paragraph, there's a Number</p> <p>19 3. Let me read the first sentence. It says, "The</p> <p>20 Chairman then called on Mr. Cain who reviewed the</p> <p>21 philosophy and approach for employee benefits at</p> <p>22 Conectiv, with an emphasis on," and Number 3,</p> <p>23 states, "The interest in being competitive both in</p> <p>24 cost and attractiveness to employees."</p>

11 (Pages 38 to 41)

BENJAMIN D. WILKINSON

<p style="text-align: right;">Page 42</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. "Competitive in both costs," what</p> <p>4 does that mean to you?</p> <p>5 A. Well, it means that it's not the</p> <p>6 most -- it's not the richest and it's not the</p> <p>7 poorest. It's competitive with whatever companies</p> <p>8 you're comparing yourself to. And cost effective</p> <p>9 means that it's cost effective.</p> <p>10 Q. Cost effective to the company?</p> <p>11 A. Yes.</p> <p>12 Q. And the next paragraph, the sentence</p> <p>13 that starts -- and this is referencing Mr. Cain --</p> <p>14 "He acknowledged that this creates a risk related</p> <p>15 to the reaction of management employees who will be</p> <p>16 the first to feel the effect of the changes, but</p> <p>17 stated that this risk could be managed in light of</p> <p>18 the cost savings to be realized from the new</p> <p>19 program."</p> <p>20 Do you see that sentence?</p> <p>21 A. Uh-huh.</p> <p>22 Q. Okay. And the "cost savings to be</p> <p>23 realized" is the cost savings to the company,</p> <p>24 correct?</p>	<p style="text-align: right;">Page 44</p> <p>1 goal of management was to have the overall benefit</p> <p>2 cost at 35 to 36 percent of pay."</p> <p>3 35 to 36 percent of pay, was that a</p> <p>4 decrease of the existing structure?</p> <p>5 MS. YU: For both Delmarva and ACE?</p> <p>6 MR. SAUDER: Well, for Delmarva.</p> <p>7 THE WITNESS: Can you say the</p> <p>8 question again?</p> <p>9 BY MR. SAUDER:</p> <p>10 Q. Yeah. The number that you said you</p> <p>11 believe Watson Wyatt came up with, the 35 to 36</p> <p>12 percent of pay --</p> <p>13 A. Uh-huh.</p> <p>14 Q. -- do you know if that was a</p> <p>15 decrease, the percentage-wise to the existing</p> <p>16 structure that was in Delmarva at the time?</p> <p>17 A. I don't remember.</p> <p>18 Q. How about ACE, the same question?</p> <p>19 A. I don't know specifically about ACE.</p> <p>20 Q. Okay. And what was the</p> <p>21 recommendation by you and Mr. Cain at this meeting?</p> <p>22 A. I guess it was to get the</p> <p>23 compensation committee's approval that the</p> <p>24 attachment was something they could approve.</p>
<p style="text-align: right;">Page 43</p> <p>1 A. Yes.</p> <p>2 Q. You see the next page, first full</p> <p>3 paragraph, it says, "Mr. Wilkinson stated that the</p> <p>4 long-term goal of management was to have the</p> <p>5 overall benefit cost at 35 to 36 percent of pay,</p> <p>6 which is the general industry standard. He then</p> <p>7 reviewed the details of the program on a plan by</p> <p>8 plan basis, specifically."</p> <p>9 Do you see this?</p> <p>10 A. Yes.</p> <p>11 Q. Who came up with the figure of 30</p> <p>12 (sic) to 36 percent of pay?</p> <p>13 MS. YU: Objection as to form. 35</p> <p>14 to 36.</p> <p>15 BY MR. SAUDER:</p> <p>16 Q. I'm sorry, 35 to 36.</p> <p>17 A. I believe it was Watson Wyatt.</p> <p>18 Q. Where it says that you stated that</p> <p>19 the long-term goal of management, is the "long-term</p> <p>20 goal," was that a decrease of the existing</p> <p>21 structure that you know?</p> <p>22 A. Where are you reading from?</p> <p>23 Q. From that same sentence. The first</p> <p>24 sentence, "Mr. Wilkinson stated that the long-term</p>	<p style="text-align: right;">Page 45</p> <p>1 Q. Okay. And that's what they would</p> <p>2 have had a copy of, is this attachment, which is</p> <p>3 Bates PHI0015883 through 1591, correct?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And you were seeking their</p> <p>6 approval on that, those page numbers?</p> <p>7 A. That's my memory.</p> <p>8 Q. Okay. Were any outside consultants</p> <p>9 present at this meeting?</p> <p>10 A. I don't recall.</p> <p>11 Q. Do you know if this is something</p> <p>12 they would have attended?</p> <p>13 MS. YU: Objection as to form.</p> <p>14 THE WITNESS: I don't recall the</p> <p>15 consultants meeting with the board or the</p> <p>16 subcommittees of the board.</p> <p>17 BY MR. SAUDER:</p> <p>18 Q. If you look on the page that ends in</p> <p>19 Bates 1586.</p> <p>20 A. Uh-huh.</p> <p>21 Q. Second full paragraph, it starts</p> <p>22 out, "Mr. Cain referred specifically to one of the</p> <p>23 resolutions before the Committee that permits the</p> <p>24 Vice President - Human Resources and Performance</p>

12 (Pages 42 to 45)

BENJAMIN D. WILKINSON

<p style="text-align: right;">Page 46</p> <p>1 Improvement to make changes in benefit plans and 2 programs from time to time to maintain their 3 competitiveness and response to business and 4 employee interests, subject to the responsibility 5 of the Committee and the Board of Directors with 6 respect to material amendments to employee benefit 7 plans." 8 Do you see that sentence? 9 A. Uh-huh. 10 Q. And that was Mr. Cain at the time, 11 he was the Vice President of Human Resources? 12 A. Yes. 13 Q. And this was, he was reminding the 14 board or the committee that he had the authority to 15 make amendments to the plan, is that your 16 understanding? 17 A. Minor. Yes, minor amendments. 18 Q. And he would sign off on those minor 19 amendments? 20 A. Yes. 21 Q. And then go down to the next 22 paragraph, which is the sentence stating, 23 "Following further discussion, on motion duly made, 24 seconded and unanimously adopted it was resolved,</p>	<p style="text-align: right;">Page 48</p> <p>1 doubt we had it firmly resolved, because we 2 wouldn't have done that until we had the 3 committee's approval, but I'm sure there were 4 drafts. 5 BY MR. SAUDER: 6 Q. Okay. But what the committee was 7 looking at was the attachment, correct? 8 A. Correct. 9 Q. Okay. And your name is on that 10 attachment dated April 19, 1998, is that correct? 11 A. Yes. 12 Q. Did you draft that attachment? 13 A. Yes. 14 Q. Did anyone else participate in 15 drafting that attachment? 16 A. Probably not. 17 Q. Okay. And if you flip to the Bates 18 Page 1589. Do you see that page? 19 A. Yes. 20 Q. Okay. It says "Cash Balance Pension 21 Plan" at the bottom? 22 A. Yes. 23 Q. And then there are a couple of 24 bullet points that go to the bottom of the page.</p>
<p style="text-align: right;">Page 47</p> <p>1 that the Personnel &amp; Compensation Committee hereby 2 approves the Conectiv Cash Balance Pension Plan 3 with respect to management employees, effective 4 January 1, 1999, in substantially the same form 5 presented in the attachment entitled, 'Conectiv 6 Compensation and Benefits.'" And then in parens it 7 says "the Attachment." 8 Do you see that? 9 A. Yes. 10 Q. And that, again, this attachment 11 that we're referencing, it starts on 1588 and goes 12 through 1591? 13 A. Yes, correct. 14 Q. Is it fair to say at that time, you 15 didn't have a plan -- you didn't have an actual 16 plan in place, correct? 17 MS. YU: Objection as to form. 18 THE WITNESS: We didn't -- 19 BY MR. SAUDER: 20 Q. I mean, you didn't have a full 21 document that an employee could see what the plan 22 was at that time, correct? 23 MS. YU: Objection as to form. 24 THE WITNESS: I don't remember. I</p>	<p style="text-align: right;">Page 49</p> <p>1 A. Uh-huh. 2 Q. That's the specific reference to the 3 cash balance plan in this document, correct? 4 A. Yes. 5 Q. Okay. And there's no other 6 reference to the cash balance plan in the remainder 7 part of the attachment? 8 A. I don't believe so. 9 THE WITNESS: Can I take five 10 minutes? 11 MR. SAUDER: Oh, sure. 12 (Recess at 11:06 a.m.) 13 (Resumed at 11:14 a.m.) 14 BY MR. SAUDER: 15 Q. We are still looking at the 16 Plaintiff's Exhibit 2, on the same page we were 17 looking at before the break, which is Bates ending 18 1589. Under the Cash Balance Pension Plan, under 19 those bullet points there, is it fair to say there 20 was no procedure, looking only at these bullet 21 points, for establishing and carrying out funding 22 of the plan? 23 A. Say it again. 24 MS. YU: Objection as to form.</p>

13 (Pages 46 to 49)

BENJAMIN D. WILKINSON

<p style="text-align: right;">Page 50</p> <p>1 BY MR. SAUDER:</p> <p>2 Q. If you focus on these bullet points,</p> <p>3 which is the area of this attachment that focuses</p> <p>4 on the cash balance pension plan --</p> <p>5 A. Yes.</p> <p>6 Q. -- within those bullet points, it's</p> <p>7 fair to say that there's no procedure for</p> <p>8 establishing and carrying out the funding of the</p> <p>9 plan and how that's done?</p> <p>10 MS. YU: Objection.</p> <p>11 BY MR. SAUDER:</p> <p>12 Q. That's not in these bullet points,</p> <p>13 correct?</p> <p>14 A. No.</p> <p>15 MS. YU: Objection as to form.</p> <p>16 BY MR. SAUDER:</p> <p>17 Q. Your answer is no, correct?</p> <p>18 A. Correct.</p> <p>19 MS. YU: There was an objection</p> <p>20 stated too.</p> <p>21 MR. SAUDER: Okay.</p> <p>22 BY MR. SAUDER:</p> <p>23 Q. And also with regard to these bullet</p> <p>24 points on the cash balance plan, there's no</p>	<p style="text-align: right;">Page 52</p> <p>1 A. Yes.</p> <p>2 Q. -- he wasn't a contract employee?</p> <p>3 So, he was involved in the Delmarva pension plan,</p> <p>4 correct?</p> <p>5 A. Yes.</p> <p>6 Q. And do you know if he was someone</p> <p>7 who was grandfathered?</p> <p>8 A. I don't recall.</p> <p>9 Q. It's your understanding that the</p> <p>10 individuals who would have been grandfathered were</p> <p>11 employees that were age 50 or older or with 20</p> <p>12 years of service as of December 31st, 1998. Is</p> <p>13 that your understanding?</p> <p>14 A. That sounds correct.</p> <p>15 Q. And was the reason for</p> <p>16 grandfathering those individuals, that you expected</p> <p>17 some of the employees to accrue less in the new</p> <p>18 plan?</p> <p>19 MS. YU: Objection as to form.</p> <p>20 THE WITNESS: Say it another way.</p> <p>21 BY MR. SAUDER:</p> <p>22 Q. One of the reasons that you -- that</p> <p>23 the determination was made to grandfather this</p> <p>24 category of employees was that there was an</p>
<p style="text-align: right;">Page 51</p> <p>1 description on how to allocate the responsibilities</p> <p>2 for the operation and administration of the plan,</p> <p>3 correct?</p> <p>4 A. Correct.</p> <p>5 MS. YU: Objection as to form.</p> <p>6 BY MR. SAUDER:</p> <p>7 Q. And there's also no indication on</p> <p>8 the basis on which the payments are made to and</p> <p>9 from the plan, correct --</p> <p>10 MS. YU: Objection --</p> <p>11 BY MR. SAUDER:</p> <p>12 Q. -- under these bullet points?</p> <p>13 MS. YU: Objection as to form.</p> <p>14 THE WITNESS: Correct.</p> <p>15 BY MR. SAUDER:</p> <p>16 Q. Okay. Sir, there's also a bullet</p> <p>17 point which says, "Extensive, 'Grandfathering'."</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Do you know who was grandfathered</p> <p>21 under this plan?</p> <p>22 A. I don't recall the details.</p> <p>23 Q. Was Don Cain an employee who would</p> <p>24 have been -- he was a regular employee, right --</p>	<p style="text-align: right;">Page 53</p> <p>1 expectation that they would accrue less under the</p> <p>2 new cash balance plan as opposed to the original</p> <p>3 plan that they were in?</p> <p>4 MS. YU: Objection as to form.</p> <p>5 THE WITNESS: No. I believe the</p> <p>6 reason for the grandfathering was there was a very</p> <p>7 strong attachment by the employees of both Delmarva</p> <p>8 and ACE to their existing plans. And in order to</p> <p>9 make this palpable for the management employees,</p> <p>10 the grandfathering took place. They wanted the</p> <p>11 reception to be good for the whole package.</p> <p>12 BY MR. SAUDER:</p> <p>13 Q. What do you mean "very strong</p> <p>14 attachment," how do you describe that?</p> <p>15 A. Just a mentality among the</p> <p>16 non-represented employees that they had a very good</p> <p>17 benefit plan, and they understood it. And this</p> <p>18 cash balance plan was something new, which they</p> <p>19 didn't understand. I think that was the rationale.</p> <p>20 Q. And how did you gather that</p> <p>21 intelligence?</p> <p>22 MS. YU: Objection as to form.</p> <p>23 THE WITNESS: Just from interfacing</p> <p>24 with other employees and being told that.</p>

14 (Pages 50 to 53)



BENJAMIN D. WILKINSON

<p style="text-align: right;">Page 54</p> <p>1 BY MR. SAUDER:</p> <p>2 Q. The individuals that were</p> <p>3 grandfathered were grandfathered for 10 years after</p> <p>4 the January 1st, 1999, is that your understanding?</p> <p>5 There was a 10-year grandfathering?</p> <p>6 A. I don't recall.</p> <p>7 Q. That's not on this document,</p> <p>8 correct?</p> <p>9 A. No.</p> <p>10 Q. And is your understanding that the</p> <p>11 individuals that were grandfathered, their pension</p> <p>12 was computed under both the old formula and the new</p> <p>13 one, and they had an opportunity to take the</p> <p>14 greater amount?</p> <p>15 A. Correct.</p> <p>16 Q. Is it fair to say, for a period of</p> <p>17 time, the greater amount would have been the old</p> <p>18 plan?</p> <p>19 MS. YU: Objection as to form.</p> <p>20 THE WITNESS: I don't recall.</p> <p>21 BY MR. SAUDER:</p> <p>22 Q. Do you know what portion of</p> <p>23 individuals who were grandfathered ultimately took</p> <p>24 the money under the old plan when they retired?</p>	<p style="text-align: right;">Page 56</p> <p>1 A. I think the last time I saw this</p> <p>2 document was in 1998.</p> <p>3 Q. And why would you have seen it in</p> <p>4 1998?</p> <p>5 A. As a recipient at that point.</p> <p>6 Q. And why would you have received a</p> <p>7 copy of this?</p> <p>8 A. Because I was the personnel manager</p> <p>9 for what they called Shared Services.</p> <p>10 Q. And what was Shared Services?</p> <p>11 A. Staff functions.</p> <p>12 Q. And what does that mean?</p> <p>13 A. Accounting, Human Resources, Public</p> <p>14 Affairs.</p> <p>15 Q. Was that a change in position</p> <p>16 from --</p> <p>17 A. Yes.</p> <p>18 Q. And why was it a change?</p> <p>19 A. For about the last year, I did this</p> <p>20 as opposed to the compensation and benefits job.</p> <p>21 After the merger was over and the benefits were in</p> <p>22 place, I became a personnel manager.</p> <p>23 Q. With regard to -- you had received</p> <p>24 this. How would you have received this; would they</p>
<p style="text-align: right;">Page 55</p> <p>1 MS. YU: Objection as to form.</p> <p>2 THE WITNESS: No.</p> <p>3 BY MR. SAUDER:</p> <p>4 Q. Under the last bullet point, which</p> <p>5 states, "Business Link," there's a sub-bullet point</p> <p>6 which says, "Useful in the Divestitures."</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. What does that mean?</p> <p>10 A. I believe that means if you're going</p> <p>11 to divest a business unit, you can carve out what</p> <p>12 pension has been accrued by those people that have</p> <p>13 been divested.</p> <p>14 Q. And that was one of the useful</p> <p>15 things with regard to this plan?</p> <p>16 A. That was the link to the business.</p> <p>17 Q. Okay. I will show you what's been</p> <p>18 previously marked as Defense Exhibit 6. After</p> <p>19 you've had an opportunity to review this document,</p> <p>20 I'm going to ask if you've seen this document prior</p> <p>21 to today?</p> <p>22 A. Yes.</p> <p>23 Q. And when did you see this document</p> <p>24 prior to today?</p>	<p style="text-align: right;">Page 57</p> <p>1 have handed you a copy of this, because you were on</p> <p>2 the --</p> <p>3 A. I'm referred to in the document as</p> <p>4 the contract for Shared Services.</p> <p>5 Q. How would you have actually received</p> <p>6 a copy of it?</p> <p>7 A. In the company mail, I guess.</p> <p>8 Q. What's that, you have like an in-box</p> <p>9 or something?</p> <p>10 A. Yes.</p> <p>11 Q. Did you play any role in drafting</p> <p>12 this document?</p> <p>13 A. Not that I recall.</p> <p>14 Q. Was this something that you would</p> <p>15 have seen before it went out, had an opportunity to</p> <p>16 proofread?</p> <p>17 A. Probably not.</p> <p>18 Q. Why do you say that?</p> <p>19 A. Because I was in a different job.</p> <p>20 Q. Do you have any personal knowledge</p> <p>21 on how this was disseminated?</p> <p>22 A. Probably just through the normal</p> <p>23 company mail.</p> <p>24 Q. But you have no personal knowledge</p>

15 (Pages 54 to 57)



BENJAMIN D. WILKINSON

<p style="text-align: right;">Page 58</p> <p>1 how it was disseminated?</p> <p>2 A. No.</p> <p>3 Q. When you say "the normal company</p> <p>4 mail," what does that mean?</p> <p>5 A. I guess the administrative assistant</p> <p>6 of the person who wrote this would probably get the</p> <p>7 copies made and then distribute them through the</p> <p>8 buildings.</p> <p>9 Q. And then once they were distributed</p> <p>10 from the buildings, then what would happen?</p> <p>11 A. I guess the administrative</p> <p>12 assistants would take them and put them in</p> <p>13 everybody's mailbox.</p> <p>14 Q. When you say everybody's mailbox,</p> <p>15 what do you mean?</p> <p>16 A. All the management employees.</p> <p>17 Q. Did all the management employees</p> <p>18 have mailboxes?</p> <p>19 A. I don't recall.</p> <p>20 Q. Okay. I'm showing you what has been</p> <p>21 previously marked as Defense Exhibit 5. The way</p> <p>22 this was originally marked, the second page is Page</p> <p>23 Number 3, and then the third page is Page Number 2,</p> <p>24 so these pages are out of order. But after you</p>	<p style="text-align: right;">Page 60</p> <p>1 communications guy.</p> <p>2 Q. And who would have reviewed it?</p> <p>3 A. Probably the then person in charge</p> <p>4 of benefits and compensation.</p> <p>5 Q. Who was that?</p> <p>6 A. I don't remember who took it.</p> <p>7 Q. Is that somebody that replaced you</p> <p>8 in that position?</p> <p>9 A. Yeah.</p> <p>10 Q. Do you know where that person came</p> <p>11 from?</p> <p>12 A. It got jumbled up because originally</p> <p>13 they were going to take the secretary of Atlantic,</p> <p>14 the corporate secretary, and put her in the job.</p> <p>15 And she decided after a week, she didn't want to do</p> <p>16 it, and she left. And then it was decided that the</p> <p>17 compensation and benefits work would be combined</p> <p>18 with labor relations under a fellow named John</p> <p>19 Zimmerman. And that's when I stepped out.</p> <p>20 Q. Of that position?</p> <p>21 A. Uh-huh, yes.</p> <p>22 Q. Is John Zimmerman still there when</p> <p>23 you left?</p> <p>24 A. Yes.</p>
<p style="text-align: right;">Page 59</p> <p>1 take a look at this document, and tell me if you</p> <p>2 recognize this document or if you've seen it</p> <p>3 before?</p> <p>4 A. Yes, I've seen it.</p> <p>5 Q. When did you see this document</p> <p>6 before today?</p> <p>7 A. Last week here.</p> <p>8 Q. Prior to that, did you see the</p> <p>9 document?</p> <p>10 A. Probably when it was written.</p> <p>11 Q. And --</p> <p>12 A. There's no date on it, so I can't</p> <p>13 give you --</p> <p>14 Q. Why would you have seen it when it</p> <p>15 was written?</p> <p>16 A. Because I was a personnel manager,</p> <p>17 and it was dealing with personnel issues.</p> <p>18 Q. And is this something that you would</p> <p>19 have had a hand in drafting?</p> <p>20 A. Probably not. This was after the</p> <p>21 merger was effected.</p> <p>22 Q. Who would have drafted this at that</p> <p>23 time?</p> <p>24 A. Probably Wally Judd, the</p>	<p style="text-align: right;">Page 61</p> <p>1 Q. And do you know what his title was?</p> <p>2 A. Manager/Labor Relations.</p> <p>3 Q. When you stepped out of that</p> <p>4 position into the Shared Services position, who did</p> <p>5 you report to?</p> <p>6 A. Don Cain.</p> <p>7 Q. Under the first -- under the</p> <p>8 paragraph, which is entitled New Cash Balance</p> <p>9 Pension Plan, at the bottom of that page --</p> <p>10 A. Yes.</p> <p>11 Q. -- do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. The second sentence states, "The</p> <p>14 'cash balance' pension plan has a new concept that</p> <p>15 has two important advantages; it's easier to</p> <p>16 understand than the former plan."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. And that was one of the perceived</p> <p>20 advantages, from Conectiv's standpoint?</p> <p>21 A. Yes.</p> <p>22 Q. Under the page, that's Page Number 4</p> <p>23 on the actual document, under "'Grandfather'</p> <p>24 Protection for Older and Long Service Employees,"</p>

16 (Pages 58 to 61)

BENJAMIN D. WILKINSON

<p style="text-align: right;">Page 62</p> <p>1 do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Who was involved in the</p> <p>4 decision-making process with regard to who would be</p> <p>5 grandfathered?</p> <p>6 A. The final decision was probably made</p> <p>7 by the Chairman.</p> <p>8 Q. And how was that presented?</p> <p>9 A. Most likely in a presentation by the</p> <p>10 Watson Wyatt consultants and the Human Resources</p> <p>11 people in Conectiv.</p> <p>12 Q. When you say the Human Resources</p> <p>13 people in Conectiv, who would they have been that</p> <p>14 would have been involved in the decision-making</p> <p>15 process?</p> <p>16 A. The compensation and benefits</p> <p>17 people.</p> <p>18 Q. Who was that?</p> <p>19 A. At that point it was probably John</p> <p>20 Zimmerman and a guy named Jim Kremmel.</p> <p>21 Q. Would Don Cain have been involved in</p> <p>22 those discussions?</p> <p>23 A. Probably, yes.</p> <p>24 Q. Were you involved in those</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. Watson Wyatt would have come up with</p> <p>2 the parameters?</p> <p>3 A. The scenarios. And then they would</p> <p>4 play the scenarios out for the management team, and</p> <p>5 we would make a decision on what we wanted to take</p> <p>6 up.</p> <p>7 Q. When you say "the scenarios," would</p> <p>8 that include essentially crunching numbers and</p> <p>9 showing you what the numbers are?</p> <p>10 A. Yes.</p> <p>11 Q. Do you remember if at any point in</p> <p>12 time a shorter grandfather period was discussed?</p> <p>13 We stated earlier that there was a 10-year</p> <p>14 grandfather. Do you know if at any point in time a</p> <p>15 shorter grandfathering period was discussed?</p> <p>16 A. I don't recall.</p> <p>17 Q. Based on what was ultimately</p> <p>18 implemented, the parameters that were ultimately</p> <p>19 decided on, is it your understanding that Don Cain</p> <p>20 would have been grandfathered?</p> <p>21 MS. YU: Objection as to form.</p> <p>22 THE WITNESS: I believe so, because</p> <p>23 he had a lot of service.</p> <p>24 BY MR. SAUDER:</p>
<p style="text-align: right;">Page 63</p> <p>1 discussions?</p> <p>2 A. It's hard to tell, because there's</p> <p>3 no date on this. I can't remember when this came</p> <p>4 out.</p> <p>5 Q. So, you can't recall?</p> <p>6 A. Un-unh.</p> <p>7 Q. At any point, do you remember being</p> <p>8 involved in discussions with regard to what group</p> <p>9 of people would be grandfathered?</p> <p>10 A. Yes, during all of the original plan</p> <p>11 design meetings.</p> <p>12 Q. And who was involved during the</p> <p>13 point in time when you were involved with those</p> <p>14 discussions?</p> <p>15 A. Watson Wyatt.</p> <p>16 Q. Anyone else?</p> <p>17 A. Probably Don Cain.</p> <p>18 Q. And what were the decisions that</p> <p>19 were made while you were involved with the</p> <p>20 discussions?</p> <p>21 A. About what?</p> <p>22 Q. About who would be grandfathered.</p> <p>23 A. Oh, probably a recommendation from</p> <p>24 Watson Wyatt.</p>	<p style="text-align: right;">Page 65</p> <p>1 Q. Okay. How about John Zimmerman?</p> <p>2 A. I don't know.</p> <p>3 Q. Is this a document that you, this</p> <p>4 D-5, is this a document that you would have</p> <p>5 received?</p> <p>6 A. Yes.</p> <p>7 Q. And why would you have received a</p> <p>8 copy of it?</p> <p>9 A. Because it deals with human</p> <p>10 resources and personnel and compensation and</p> <p>11 benefits, and that's the business I was in.</p> <p>12 Q. Okay. But nothing in this document</p> <p>13 would have directly affected your compensation, is</p> <p>14 that fair?</p> <p>15 A. It would have impacted me because I</p> <p>16 was in the 401(k) savings plan.</p> <p>17 Q. Okay. Do you have a specific</p> <p>18 recollection of receiving this document, and if so,</p> <p>19 how you received this document?</p> <p>20 A. No.</p> <p>21 Q. No to --</p> <p>22 A. Oh, wait a minute. It was mailed to</p> <p>23 the homes.</p> <p>24 Q. What do you base that on?</p>

17 (Pages 62 to 65)

BENJAMIN D. WILKINSON

<p style="text-align: right;">Page 66</p> <p>1 A. The back page.</p> <p>2 Q. Okay. And do you know if -- do you</p> <p>3 have a specific recollection of whether this was</p> <p>4 mailed to your home?</p> <p>5 A. No.</p> <p>6 Q. And do you have any specific</p> <p>7 knowledge of who other than -- well, do you have</p> <p>8 any specific knowledge that it was, in fact, mailed</p> <p>9 to all of the employees' homes?</p> <p>10 A. I'm assuming it was because of the</p> <p>11 back page.</p> <p>12 Q. Okay, but you have no specific</p> <p>13 knowledge of that?</p> <p>14 A. No.</p> <p>15 Q. That's a no?</p> <p>16 A. That's a no.</p> <p>17 Q. I'll show you what has been marked</p> <p>18 previously as Plaintiff's Exhibit three. This is</p> <p>19 also a document with the heading "facts," a similar</p> <p>20 heading to the document we just looked at, D-5.</p> <p>21 Once you've had an opportunity to review this</p> <p>22 document, if you could just let me know if you've</p> <p>23 seen this document prior to today?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. Is this also a document, like the</p> <p>2 documents we discussed earlier, that may have been</p> <p>3 laying around for employees to pick up?</p> <p>4 MS. YU: Objection as to form.</p> <p>5 THE WITNESS: Sure.</p> <p>6 BY MR. SAUDER:</p> <p>7 Q. Do you know who prepared this</p> <p>8 document?</p> <p>9 A. I don't recall.</p> <p>10 Q. Do you know if you played any role</p> <p>11 in preparing this document?</p> <p>12 A. Without a date, it's very hard to</p> <p>13 tell. There were lots of these documents prepared</p> <p>14 under the heading, "facts."</p> <p>15 Q. And when you say a lot of documents</p> <p>16 prepared under the heading, "facts," is that, there</p> <p>17 would have been prepared under the heading, "facts"</p> <p>18 that would have had nothing to do with the cash</p> <p>19 balance plan?</p> <p>20 A. Probably there were different</p> <p>21 "facts" sheets for the 401(k) and the health care</p> <p>22 plans, and all under the same theme about the facts</p> <p>23 about the benefits.</p> <p>24 Q. For all of the changes that were</p>
<p style="text-align: right;">Page 67</p> <p>1 Q. When did you see this?</p> <p>2 A. I can't recall if the last time I</p> <p>3 saw it was nine years ago or when we were in here</p> <p>4 last week. We went through a lot of documents.</p> <p>5 Q. And do you have a -- prior to last</p> <p>6 week, do you have a specific recollection of seeing</p> <p>7 this document?</p> <p>8 A. No.</p> <p>9 Q. Well, this document, is it fair to</p> <p>10 say that this document is the same heading as the</p> <p>11 document we looked at, at D-5?</p> <p>12 A. Yes.</p> <p>13 Q. And do you see any notation on here</p> <p>14 that this document was -- this specific document</p> <p>15 was mailed to anyone?</p> <p>16 A. No.</p> <p>17 Q. Is there any date on this document?</p> <p>18 A. No.</p> <p>19 Q. Do you have any specific knowledge</p> <p>20 of how this document was disseminated?</p> <p>21 A. No.</p> <p>22 Q. Do you have any general knowledge on</p> <p>23 how this document would have been disseminated?</p> <p>24 A. Probably through the company mail.</p>	<p style="text-align: right;">Page 69</p> <p>1 taking place at the time?</p> <p>2 A. Yes.</p> <p>3 Q. If you look at the Bates that ends</p> <p>4 in 231, "Transition Issues." Do you see that?</p> <p>5 A. Uh-huh.</p> <p>6 Q. At the last sentence of that</p> <p>7 paragraph states, "The transition rules will be</p> <p>8 designed to be fair to all employees and sensitive</p> <p>9 to the concerns of various groups affected, from</p> <p>10 new employees to those who are approaching</p> <p>11 retirement age."</p> <p>12 Who was the targeted audience for</p> <p>13 this communication?</p> <p>14 MS. YU: Objection.</p> <p>15 BY MR. SAUDER:</p> <p>16 Q. Who do you think the targeted</p> <p>17 audience would have been for this communication?</p> <p>18 MS. YU: Objection as to form.</p> <p>19 BY MR. SAUDER:</p> <p>20 Q. You can answer.</p> <p>21 A. Who was the target audience?</p> <p>22 Q. Well, let me rephrase that. Is it</p> <p>23 fair to say that the targeted audience for this</p> <p>24 communication would have been individuals who</p>

18 (Pages 66 to 69)

BENJAMIN D. WILKINSON

<p style="text-align: right;">Page 70</p> <p>1 ultimately ended up in the cash balance plan?</p> <p>2 MS. YU: Objection as to form.</p> <p>3 BY MR. SAUDER:</p> <p>4 Q. At least that subset?</p> <p>5 MS. YU: Objection.</p> <p>6 THE WITNESS: I think that's fair.</p> <p>7 BY MR. SAUDER:</p> <p>8 Q. If you flip to the last page where</p> <p>9 it says, "Additional Information to Come."</p> <p>10 A. Uh-huh.</p> <p>11 Q. The last sentence in the first</p> <p>12 paragraph states, "In the meanwhile, please</p> <p>13 continue to address any questions we may be able to</p> <p>14 answer to your manager."</p> <p>15 What does that mean, "to your</p> <p>16 manager," who are they referring to?</p> <p>17 A. Well, the audience for this were the</p> <p>18 non-represented employees, all of whom have a</p> <p>19 management structure that they're in. And I guess</p> <p>20 this is an attempt to say, "If you've got</p> <p>21 questions, go to your manager, don't go to human</p> <p>22 resources."</p> <p>23 Q. And were the managers -- did the</p> <p>24 managers have any special knowledge with regard to</p>	<p style="text-align: right;">Page 72</p> <p>1 Q. Do you have any specific</p> <p>2 recollection of actually being involved in those</p> <p>3 meetings?</p> <p>4 A. I remember sitting through several</p> <p>5 of them.</p> <p>6 Q. And how was this -- how did this</p> <p>7 presentation happen? Was it individuals from Human</p> <p>8 Resources and Watson Wyatt would stand up and</p> <p>9 explain the plan?</p> <p>10 A. Yes, and then take questions and</p> <p>11 maybe have handouts at the meeting, and just like a</p> <p>12 typical informational session.</p> <p>13 Q. And do you have any specific</p> <p>14 recollection of handouts actually being handed out</p> <p>15 at these meetings?</p> <p>16 A. No specific recollection, but I'm</p> <p>17 sure there were things handed out. That's just the</p> <p>18 way we operated.</p> <p>19 Q. Would you have prepared the</p> <p>20 handouts?</p> <p>21 A. Myself?</p> <p>22 Q. Yes.</p> <p>23 A. No.</p> <p>24 Q. Would you have played any role in</p>
<p style="text-align: right;">Page 71</p> <p>1 this plan?</p> <p>2 A. The managers over a period of time</p> <p>3 attended several orientation meetings so that they</p> <p>4 understood how these things worked better than the</p> <p>5 average employee did.</p> <p>6 Q. Okay. Managers from both ACE and</p> <p>7 Delmarva?</p> <p>8 A. Yes.</p> <p>9 Q. And who would have been leading</p> <p>10 or -- who would have been instructing in those</p> <p>11 sessions? In other words, who would have been</p> <p>12 imparting the knowledge onto these managers in</p> <p>13 those sessions?</p> <p>14 A. It could have been compensation and</p> <p>15 benefits people. It might have been Watson Wyatt</p> <p>16 early on. It might have been one of the three</p> <p>17 Human Resources managers who had gotten specific</p> <p>18 training.</p> <p>19 Q. Would you have been involved in any</p> <p>20 of those meetings?</p> <p>21 A. Probably.</p> <p>22 Q. And do you know when those meetings</p> <p>23 took place?</p> <p>24 A. No, I don't recall.</p>	<p style="text-align: right;">Page 73</p> <p>1 preparing the substance of the handouts?</p> <p>2 A. If there were questions, someone</p> <p>3 might come to me and ask something, but...</p> <p>4 Q. And there would have been multiple</p> <p>5 meetings?</p> <p>6 A. Yes.</p> <p>7 Q. Yes?</p> <p>8 A. Yes.</p> <p>9 Q. And there would have been different</p> <p>10 people from Human Resources essentially imparting</p> <p>11 the information at these different meetings?</p> <p>12 MS. YU: Objection as to form.</p> <p>13 THE WITNESS: That's quite possible</p> <p>14 because there was a lot going on besides new</p> <p>15 compensation and benefits. The recruiting process</p> <p>16 was changing, the structure of the function was</p> <p>17 changing. So, there was lots of different reasons</p> <p>18 to get the line managers together and talk to them.</p> <p>19 And there was a certain amount of uncertainty among</p> <p>20 most management employees. It's a, "Are we going</p> <p>21 to be the next ones that get bought?" Lots of</p> <p>22 questions like that.</p> <p>23 BY MR. SAUDER:</p> <p>24 Q. So, is it fair to say that</p>

19 (Pages 70 to 73)

BENJAMIN D. WILKINSON

<p style="text-align: right;">Page 74</p> <p>1 management employees were concerned about losing 2 their job at the time? 3 A. Sure. 4 Q. At these meetings where the managers 5 were given specific information about the changes 6 that were happening within the company, were you 7 one of the individuals -- for the meetings that you 8 believe you may have been present at, were you one 9 of the individuals that would have made a 10 presentation? 11 A. Conceivably, but I don't remember 12 any specific presentations. 13 Q. Okay. I will show you what's 14 previously been marked as Plaintiff's Exhibit 9. 15 Have you had an opportunity to look at Plaintiff's 16 Exhibit 9? 17 A. Yes. 18 Q. Have you seen this document before 19 today? 20 A. Yes. 21 Q. When did you see it? 22 A. Probably back in the late '90s. 23 Q. If you flip to the last page, dated 24 December 10th, 1999, does that refresh your</p>	<p style="text-align: right;">Page 76</p> <p>1 plan? 2 MS. YU: Objection as to form. 3 THE WITNESS: I forgot the question 4 now. 5 BY MR. SAUDER: 6 Q. Is this -- we've established that 7 this is Don Cain's signature on the bottom of this 8 last page, which is Bates PHI000520? 9 A. That's correct. 10 Q. Is Don Cain's signature on this page 11 an indication that this is Don Cain formally 12 adopting the plan? 13 MS. YU: Objection as to form. 14 THE WITNESS: I guess so. This is 15 actually a board document, I believe. I don't 16 quite know how to answer your question. He just 17 signed it because it was submitted under his name. 18 BY MR. SAUDER: 19 Q. But in the first sentence it says, 20 "I, Donald Cain, Vice President of Human Resources 21 and Productivity Improvement of Conectiv (the 22 'Company'), a Delaware corporation, hereby certify 23 that I approve the adoption of the Conectiv (the 24 'Plan') document in the form attached hereto,</p>
<p style="text-align: right;">Page 75</p> <p>1 recollection on the time frame you would have seen 2 this document for the first time? 3 A. I probably would have seen this 4 before it was actually submitted to the board. 5 Q. You say late '90s. Sometime -- you 6 would have seen it first perhaps sometime after 7 June of 1999, is that fair? 8 MS. YU: Objection as to form. 9 BY MR. SAUDER: 10 Q. You can answer. 11 A. Probably. 12 Q. Okay. What is this document? 13 A. This is the official plan language 14 for the pension plan. 15 Q. And on that last page, Don Cain, it 16 says, "Don Cain, Vice President of Human Resources 17 and Productivity Improvement." Is that Don Cain's 18 signature on that page? 19 A. Yes. 20 Q. And you know what Don Cain's 21 signature looks like? 22 A. Yes. 23 Q. And is Don Cain's signature on this 24 page an indication that he is formally adopting the</p>	<p style="text-align: right;">Page 77</p> <p>1 effective January 1st, 1999," correct? 2 A. That's what it says. 3 Q. Okay. And he goes on to state that 4 he is given that authority by the compensation 5 committee meeting of April 23rd, 1999, correct? 6 A. Yes. 7 Q. Or 1998, I'm sorry. Correct? 8 A. Yes. 9 Q. And this is the actual plan? 10 MS. YU: Objection. 11 BY MR. SAUDER: 12 Q. This is the Conectiv cash balance 13 plan, correct? 14 MS. YU: Objection as to form. 15 THE WITNESS: Yes, as written by 16 Pepper Hamilton. 17 BY MR. SAUDER: 18 Q. Did you play any role in preparing 19 this document? 20 A. No. 21 Q. Do you know if Don Cain played any 22 role in preparing this document? 23 A. I don't know. 24 Q. Do you know at what point this</p>

20 (Pages 74 to 77)



BENJAMIN D. WILKINSON

<p style="text-align: right;">Page 78</p> <p>1 document reached its final form?</p> <p>2 MS. YU: Objection as to form.</p> <p>3 THE WITNESS: I assume it was</p> <p>4 sometime in early December 1999.</p> <p>5 BY MR. SAUDER:</p> <p>6 Q. Okay. That's all of the questions I</p> <p>7 have for that document, sir. I'll show you what's</p> <p>8 been previously marked as Plaintiff's Exhibit 10.</p> <p>9 I'm going to ask you to flip to the back portion of</p> <p>10 this document, which is the Bates PHI001571. Are</p> <p>11 you on that page, sir?</p> <p>12 A. 001571?</p> <p>13 Q. Right.</p> <p>14 A. Yes.</p> <p>15 Q. And the header on that is "February</p> <p>16 2001 Amendment To Retirement Plan"?</p> <p>17 A. Yes.</p> <p>18 Q. And this is, again, this is the</p> <p>19 "Conectiv Cash Balance Sub-Plan," correct, the</p> <p>20 front of this?</p> <p>21 A. Yes.</p> <p>22 Q. And is that Don Cain's signature on</p> <p>23 1571?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. You can answer.</p> <p>2 A. That's what it looks like.</p> <p>3 Q. And he was given that authority, or</p> <p>4 at least that was discussed at that April 1998</p> <p>5 meeting that you attended, correct?</p> <p>6 A. I believe so.</p> <p>7 Q. Sir, I'm going to show you what's</p> <p>8 previously been marked as Defense Exhibit 9. Do</p> <p>9 you recognize Defense Exhibit 9, sir?</p> <p>10 A. I don't remember this one.</p> <p>11 Q. Do you recognize the title of this</p> <p>12 type of document which says "InSight"?</p> <p>13 A. I recognize the title, yes.</p> <p>14 Q. And what is your understanding of</p> <p>15 how these InSight type of documents, which states</p> <p>16 underneath, "InSight, The Conectiv Employee</p> <p>17 Newsletter." What's your understanding of how they</p> <p>18 were or whether they were disseminated within the</p> <p>19 company?</p> <p>20 A. It doesn't really appear that this</p> <p>21 one was mailed, but it's hard to tell. It was</p> <p>22 either mailed to the homes or it was just</p> <p>23 distributed widely through the different management</p> <p>24 ranks.</p>
<p style="text-align: right;">Page 79</p> <p>1 Q. And the date on that is January</p> <p>2 2000 -- yeah, January. It looks like January 2001,</p> <p>3 at least, correct, that time frame?</p> <p>4 A. Yes.</p> <p>5 Q. I can't see what the other actual</p> <p>6 specific date is. And is this your understanding</p> <p>7 that this is Don Cain amending some portion of the</p> <p>8 plan?</p> <p>9 A. I've never seen this document</p> <p>10 before.</p> <p>11 Q. Okay. If you review what's taking</p> <p>12 place on that page, is it your understanding that</p> <p>13 that's what's happening, that Don Cain is amending</p> <p>14 some portion of the plan?</p> <p>15 MS. YU: Objection as to form. The</p> <p>16 document speaks for itself.</p> <p>17 BY MR. SAUDER:</p> <p>18 Q. You can answer, sir.</p> <p>19 A. I forget the question again.</p> <p>20 Q. I'm sorry. Is it your understanding</p> <p>21 that Don Cain's signature indicates that there's</p> <p>22 some type of an amendment to the plan?</p> <p>23 MS. YU: Objection as to form.</p> <p>24 BY MR. SAUDER:</p>	<p style="text-align: right;">Page 81</p> <p>1 Q. Would that be similar to distributed</p> <p>2 widely, would that be something that may be laying</p> <p>3 around the company?</p> <p>4 MS. YU: Objection as to form.</p> <p>5 THE WITNESS: Sure.</p> <p>6 BY MR. SAUDER:</p> <p>7 Q. If you flip to the second page of</p> <p>8 this document, which ends in Bates PHI003429. Do</p> <p>9 you see that?</p> <p>10 A. Yes.</p> <p>11 Q. There is a reference on the first</p> <p>12 column, bottom subheading, which says,</p> <p>13 "July/August - Cash Balance Pension Plan Meeting</p> <p>14 For Employees." Do you see that?</p> <p>15 A. No. Where are you?</p> <p>16 Q. Right here. Right at this</p> <p>17 subheading that says "July/August - Cash Balance</p> <p>18 Pension Plan Meetings For Employees," bold.</p> <p>19 A. Got you.</p> <p>20 Q. Okay. Are you aware of any meetings</p> <p>21 that took place around July or August of 1999</p> <p>22 regarding the cash balance pension plan, specific</p> <p>23 meetings with employees?</p> <p>24 A. I don't recall any.</p>

21 (Pages 78 to 81)



BENJAMIN D. WILKINSON

<p style="text-align: right;">Page 82</p> <p>1 Q. Do you know if you participated in 2 any of them? 3 A. Probably not, because I wasn't in 4 the plan. I didn't have any interest in how it 5 worked. 6 Q. Would you have participated as 7 someone who would make a presentation at these 8 types of meetings? 9 A. I think by this point in time, the 10 benefit responsibility had switched to John and Jim 11 Kremmel. 12 Q. John Zimmerman and Jim Kremmel? 13 A. Yes. 14 Q. I'm showing you what has been 15 previously marked as Defense Exhibit 10. I'm 16 showing you what has been marked as Defense Exhibit 17 10. Do you recognize this document? 18 A. No, I don't remember this. There's 19 no dates again. Oh, yeah, there's June 1999. 20 Q. Go to the second paragraph, second 21 sentence. It starts, "As managers, please make 22 sure that everyone who wishes to attend the 23 information session is given the opportunity." 24 Do you have an understanding of how</p>	<p style="text-align: right;">Page 84</p> <p>1 Is that sentence in conjunction with 2 the sentence that states, "As managers" in any way 3 lead you to believe that this communication was 4 specifically designed for managers? 5 MS. YU: Objection as to form. 6 THE WITNESS: I'm not sure I 7 understand what you mean. 8 BY MR. SAUDER: 9 Q. Well, we went through the sentence 10 that states, "As managers." And then the next 11 sentence we went through was, "If you or your 12 employees have any questions." What does that 13 mean, "if you or your employees"? 14 MS. YU: Objection as to form. 15 THE WITNESS: If you or -- I guess 16 it's, "If you, Mr. Manager and the employees that 17 work for you." 18 BY MR. SAUDER: 19 Q. Okay. The third paragraph, where it 20 starts out, "These meetings will be the best source 21 of information on the plan and employees' opening 22 balances. Recent stories in the national media 23 have raised concerns about some cash-balance plans 24 that do not offer the same level of financial</p>
<p style="text-align: right;">Page 83</p> <p>1 this communication would have been disseminated 2 within the company? 3 A. Probably just through the normal 4 document distribution system, which would have 5 involved the administrative assistants, the 6 mailroom. 7 Q. Do you know if the target audience 8 of this communication would have been the managers? 9 MS. YU: Objection as to form. 10 THE WITNESS: I think it would have 11 been anybody who was in the cash balance plan. 12 BY MR. SAUDER: 13 Q. So, what does that mean to you where 14 it says, "As managers, please make sure that 15 everyone who wishes to attend the information 16 session is given the opportunity." 17 A. I would guess that means be 18 flexible, and that this is very important, we want 19 you to encourage all of your people to come. 20 Q. And then the bottom, last paragraph, 21 first sentence states, "If you or your employees 22 have any questions after receiving the opening 23 statements, please hold them until the meetings 24 where experts will be available to respond."</p>	<p style="text-align: right;">Page 85</p> <p>1 security or grandfathering provisions as Conectiv's 2 Cash Balance Pension Plan. One part of the 3 presentation will address these concerns and 4 demonstrate how Conectiv's plan is different." 5 Do you see that? 6 A. Yes. 7 Q. What's your understanding of that 8 last portion, where it says, "and demonstrate how 9 Conectiv's plan is different"? 10 MS. YU: Objection as to form. 11 THE WITNESS: Well, I think it means 12 that Conectiv's plan design was different than the 13 plan design that was discussed in the national 14 media. 15 BY MR. SAUDER: 16 Q. Okay. The next paragraph down 17 states, second sentence in, where it says that, 18 "The Vanguard Group will act as the plan 19 administrator, and the Towers Perrin consulting 20 firm will act as the actuary." 21 A. Which paragraph you got? 22 Q. It's the fourth paragraph, second 23 sentence. 24 A. Okay.</p>

22 (Pages 82 to 85)

BENJAMIN D. WILKINSON

<p style="text-align: right;">Page 86</p> <p>1 Q. At what point were they, was Towers 2 brought in as an actuary, do you recall? 3 A. No, I don't recall. 4 Q. Did you have any interaction with 5 them? 6 A. Very little. 7 Q. And in what capacity would you have 8 interacted with them? 9 A. Maybe to ask some questions, but 10 actuarial work was not my strong suit. 11 Q. Who would have been the main contact 12 at Conectiv with Towers? 13 A. Probably someone in the finance 14 field. Somebody who worked for the CFO. Maybe the 15 treasurer or the -- 16 Q. And who was the treasurer at the 17 time? 18 A. Oh, I don't remember. 19 Q. Going back to that sentence where it 20 says, "demonstrate how the Conectiv's plan is 21 different," and you stated "different than the 22 plans that were in the national media." Is it your 23 understanding that these meetings, one of the 24 purposes of these meetings was to explain to the</p>	<p style="text-align: right;">Page 88</p> <p>1 Q. But you don't know who that someone 2 would have been? 3 A. I don't recall, no. 4 Q. Would you have presented anything at 5 any of these meetings? 6 A. Probably not. 7 Q. So, is it fair to say that you have 8 no specific recollection of being at any of these 9 meetings? 10 A. The format of these documents is 11 very familiar, but I don't remember a specific -- 12 we went to a lot of meetings. Actually, it looks 13 like the Vanguard Group did this one. 14 Q. And you're stating that because it 15 says "Vanguard Group" on the top of that second 16 page? 17 A. That's correct. 18 Q. I'm showing you what has been 19 previously marked as Plaintiff's Exhibit 4. Sir, 20 after you've had an opportunity to review 21 Plaintiff's Exhibit 4, if you would just let me 22 know if you've seen that document prior to today. 23 A. It looks like a copy of 24 transparencies or slides used in an informational</p>
<p style="text-align: right;">Page 87</p> <p>1 employees that the Conectiv plan was, in fact, 2 different than the plans that were in the national 3 media? 4 A. That's -- 5 MS. YU: Objection. 6 BY MR. SAUDER: 7 Q. Go ahead. 8 A. That's what I'm guessing. 9 Q. That's what you're assuming? 10 A. That's what I'm assuming. 11 Q. If you flip to the second page of 12 that document, it has a list of meetings. 13 A. Yes. 14 Q. Based on my review of this list, 15 does this in any way refresh your recollection as 16 to whether you attended any of those meetings? 17 A. I probably did. I just don't 18 remember this specific meeting, but this is a 19 common format for sending out notices of big 20 meetings where they want everybody to attend. 21 Q. And do you have an understanding of 22 the format of these meetings? 23 A. Probably presentations by someone to 24 large assembled groups.</p>	<p style="text-align: right;">Page 89</p> <p>1 meeting. 2 Q. Prior to today, have you seen this? 3 A. Probably back in 1999. 4 Q. And why would you have seen it then? 5 A. Probably went to a meeting and got a 6 copy. 7 Q. Okay. But you have no specific 8 recollection? 9 A. (Witness indicating.) 10 Q. Do you know if you played any role 11 in preparing any of these slides? 12 A. Doubtful. 13 Q. Because of the timing, is that why 14 you answered that way, because of the timing? 15 A. Yes. 16 Q. Do you know how this was presented? 17 MS. YU: Objection as to form. 18 THE WITNESS: It appears to be a 19 presentation made by Vanguard. 20 BY MR. SAUDER: 21 Q. If you turn to the second page of 22 this document, Bates ending 302. 23 A. Uh-huh. 24 Q. First slide up in the upper</p>

23 (Pages 86 to 89)

BENJAMIN D. WILKINSON

<p style="text-align: right;">Page 90</p> <p>1 left-hand corner states "Important Perspectives on 2 Conectiv's New Retirement Program." 3 Do you see that? 4 A. Yes. 5 Q. And then in the second bullet it 6 says, "Cash balance plans are controversial." And 7 there's two subheadings, which says "Series of Wall 8 Street Journal articles" and the second heading 9 "Congressional hearings." 10 Do you see that? 11 A. Yes. 12 Q. Do you have any specific 13 recollection what, if anything, was discussed 14 regarding that at these meetings? 15 A. There was a series of Wall Street 16 Journal articles that came out, I think, concerning 17 IBM and their cash balance plan that a lot of our 18 employees saw in the paper, and I guess it raised 19 concerns in their mind, since they now have a cash 20 balance plan, that there was something wrong. 21 Q. And the next bullet says "Criticisms 22 leveled at cash balance plans," and then it has 23 three subparts. 24 A. Uh-huh.</p>	<p style="text-align: right;">Page 92</p> <p>1 says, "New program not designed to provide cost 2 savings for Conectiv," correct? 3 MS. YU: Objection as to form. 4 THE WITNESS: I'm sorry. You're 5 talking to me? 6 BY MR. SAUDER: 7 Q. Yes. That's what that -- one of the 8 points that bullet was designed to address was, as 9 we discussed, the mask cost cutting, the bullet 10 that says, "New program not designed to provide 11 cost savings for Conectiv," correct? 12 MS. YU: Objection. 13 THE WITNESS: Correct. 14 BY MR. SAUDER: 15 Q. And then we go to that top side in 16 the upper left-hand corner again, the second bullet 17 says, "Poor handling of the 18 communication/transition." 19 Do you see that? 20 A. Where are you, the top left? 21 Q. Yeah, top left, right under, still 22 under the "Criticisms leveled at cash balance 23 plan." 24 A. Yes.</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. And the first one is "Masks cost 2 cutting." Do you see that? 3 A. Yes. 4 Q. Okay. And if you go down to the 5 next slide right below that, on the left-hand side, 6 which is titled, "Important Perspectives on 7 Conectiv's New Retirement Program." 8 A. Yes. 9 Q. Okay. And the first bullet on that 10 is, "New program not designed to provide cost 11 savings for Conectiv." Do you see that? 12 A. Yes. 13 Q. Is that bullet meant to address the 14 concern of masks cost cutting? 15 MS. YU: Objection as to form. 16 THE WITNESS: I think that bullet 17 probably refers to the fact that Conectiv cash 18 balance plan, in the words of Watson Wyatt, was the 19 richest cash balance plan their firm had ever put 20 in place. It was not designed to mask any cost 21 cutting. It was very rich, very generous. 22 BY MR. SAUDER: 23 Q. And that's one of the points that 24 that bullet is addressing, correct, the bullet that</p>	<p style="text-align: right;">Page 93</p> <p>1 Q. It says, "Poor handling of 2 communication/transition." 3 A. Right. 4 Q. Okay. 5 A. I don't think that refers to the 6 Conectiv plan, though. I think that refers to the 7 general public stuff that would be written about in 8 the Wall Street Journal. 9 Q. Because there were prior documents 10 that we looked at that specifically said 11 communication was one of the benefits of this new 12 plan, correct? 13 MS. YU: Objection. 14 THE WITNESS: It was a very high 15 priority. 16 BY MR. SAUDER: 17 Q. Okay. And what about the last 18 bullet where it says, "Accruals cease for certain 19 employees" under one of the "Criticisms leveled at 20 cash balance plans." 21 That was not referring to the 22 Conectiv plan, correct? 23 MS. YU: Objection. 24 THE WITNESS: I don't believe so. I</p>

24 (Pages 90 to 93)

BENJAMIN D. WILKINSON

<p style="text-align: right;">Page 94</p> <p>1 think this is just talking about the general 2 publicity that the Wall Street Journal was giving 3 these plans. 4 BY MR. SAUDER: 5 Q. If you look at the upper top slide 6 on the right-hand side there. 7 A. Yes. 8 Q. There's a graph. This is still on 9 Page 302. Do you know what data or assumptions or 10 where the data came from to put this graph 11 together? 12 MS. YU: Objection. 13 THE WITNESS: I assume it came from 14 either the actuaries or from Watson Wyatt or maybe 15 Vanguard. 16 BY MR. SAUDER: 17 Q. Okay. If you go to 305, Bates 305. 18 Two charts on the right-hand side, bottom? 19 A. Uh-huh. 20 Q. "Conectiv Cash Balance Account 21 Versus Prior Plan - Delmarva," and then there's a 22 similar slide for Atlantic. Is the same answer 23 with regard to where you believe the data sources 24 came from for these charts?</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. Okay. If you go to the page Bates 2 ending 221, the handwriting at the bottom there, it 3 says, "Date 12/98." 4 Do you recognize that handwriting? 5 A. No. 6 Q. That's all I have for that. I will 7 show you what has been previously marked as Defense 8 Exhibit 12. I'm showing you what has been marked 9 as Defense Exhibit 12. Have you seen this document 10 prior to today? 11 A. I don't recognize this document. 12 Q. If you go to the bottom portion of 13 the first page where it says in bold "Cash Balance 14 Schedule Revised." 15 Do you see that? 16 A. Yes. 17 Q. And the first sentence says, "A 18 revised schedule for Cash Balance Pension Plan 19 meetings is attached." 20 Do you have any recollection that 21 there was a revision to those July 1999 meetings? 22 MS. YU: Objection. 23 THE WITNESS: No. 24 BY MR. SAUDER:</p>
<p style="text-align: right;">Page 95</p> <p>1 MS. YU: Objection. 2 THE WITNESS: I'm not sure I can 3 answer that. I would guess the data came from an 4 outside consultant of some sort. 5 BY MR. SAUDER: 6 Q. Now, do you know if Don Cain would 7 have been an individual who would have made a 8 presentation at any of these types of meetings? 9 A. It's likely at the beginning when 10 they were just rolling things out to the senior 11 management team, that he would have made either 12 introductions or part of the presentation. 13 Q. But not -- 14 A. Not down in the weed. 15 Q. But not to the non-senior 16 management? 17 A. No. 18 Q. Let me show you what has been marked 19 as Defense Exhibit 13. I'm just going to show you 20 the first page there where it says -- there's 21 handwriting on the left-hand side. 22 A. Yes. 23 Q. You recognize that handwriting? 24 A. Not really. I recognize the name.</p>	<p style="text-align: right;">Page 97</p> <p>1 Q. The header of this document is 2 "InSight online." And underneath it says, 3 "Conectiv's Intranet resource for corporate news 4 and information." 5 Do you see that? 6 A. Yes. 7 Q. What is your understanding of how 8 this type of document or how this specific document 9 was disseminated? 10 MS. YU: Objection. 11 THE WITNESS: It appears that it was 12 disseminated on the Internet, not in hard copy. 13 BY MR. SAUDER: 14 Q. On the Intranet, the Conectiv 15 Intranet? 16 A. Yes. 17 Q. And do you know at the time in July 18 of 1999, if all management, non-represented 19 management employees who would have been put in the 20 cash balance plan, do you know if all of those 21 individuals had a work computer? 22 MS. YU: Objection. 23 THE WITNESS: I don't know. 24 BY MR. SAUDER:</p>

25 (Pages 94 to 97)

BENJAMIN D. WILKINSON

<p style="text-align: right;">Page 98</p> <p>1 Q. Do you know if they all had an 2 e-mail account, company e-mail account? 3 A. It's highly likely everyone did, but 4 I just don't know that for a fact. 5 Q. Okay. Is it fair to say that you 6 have no recollection of in any way preparing this 7 document? 8 A. No. 9 THE WITNESS: Can I get another five 10 minutes? 11 MR. SAUDER: Yes. 12 (Recess at 12:26 p.m.) 13 (Resumed at 12:36 p.m.) 14 BY MR. SAUDER: 15 Q. I'll show you what's been previously 16 marked as Defendant's Exhibit 3. Sir, I'm showing 17 you what has been marked as Defendant's Exhibit 3. 18 It's entitled "Conectiv Cash Balance Plan." It's 19 dated February 20, 1998. If you can take a look at 20 that, and let me know if you've seen this document 21 before today. 22 A. Yes, I've seen this. 23 Q. When did you see this document prior 24 to today?</p>	<p style="text-align: right;">Page 100</p> <p>1 thinking around how we could design a cash balance 2 plan. 3 Q. And was this a presentation where 4 Watson Wyatt was essentially making presentation to 5 you, Don Cain, and anyone else from Conectiv who 6 may have been present? 7 A. Yes. 8 Q. So, you played no role in preparing 9 these slides? 10 A. No. 11 Q. If you flip to the Bates page that 12 ends 447. It's entitled "Cash Balance Plan 13 Example." 14 A. Okay. 15 Q. Do you recognize the handwriting on 16 that document, on that page? 17 A. No. 18 Q. If you go to the Bates Page 449, 19 "Pattern of Lump Sum Benefit Growth." Do you see 20 that graph there? 21 A. Yes. 22 Q. Do you know the purpose of this data 23 presentation in that graph? 24 MS. YU: Objection.</p>
<p style="text-align: right;">Page 99</p> <p>1 A. February 20th, 1998. 2 Q. And in what context did you see this 3 document on that date? 4 A. This is a Watson Wyatt presentation. 5 Q. And you were present at the 6 presentation? 7 A. Yes. 8 Q. Who was present at the presentation? 9 A. Don Cain, myself and probably three 10 Watson Wyatt consultants. 11 Q. Anyone else from Conectiv? 12 A. I don't remember. 13 Q. And when I say "Conectiv," I mean 14 anyone else from, also include in that Delmarva or 15 Atlantic City Electric. 16 A. I just don't remember. 17 Q. And you say three Watson Wyatt 18 consultants? 19 A. Yes, the three that I mentioned 20 earlier. 21 Q. Okay. And what was the purpose of 22 this presentation? 23 A. The purpose was to bring senior 24 management, Don Cain, up to speed on the current</p>	<p style="text-align: right;">Page 101</p> <p>1 THE WITNESS: Do I know the purpose? 2 BY MR. SAUDER: 3 Q. Yeah. Do you know what this was -- 4 what were they conveying to you here? 5 MS. YU: Objection. 6 BY MR. SAUDER: 7 Q. And when I say that, I mean Watson 8 Wyatt. 9 MS. YU: Objection. 10 THE WITNESS: What they were 11 portraying, how your benefit would increase over a 12 career based on a three percent annual salary 13 increase. 14 BY MR. SAUDER: 15 Q. And where it says "Assumes three 16 percent annual salary increase," do you know the 17 source of that assumption? 18 MS. YU: Objection. 19 THE WITNESS: It's Watson Wyatt's 20 actuaries, I guess. 21 BY MR. SAUDER: 22 Q. You didn't have any input in coming 23 up with that three percent number? 24 A. No.</p>

26 (Pages 98 to 101)



BENJAMIN D. WILKINSON

Page 102	Page 104
<p>1 Q. Did you know if Don Cain did?</p> <p>2 A. I doubt it.</p> <p>3 Q. Why do you say that?</p> <p>4 A. Because it's a Watson Wyatt</p> <p>5 presentation.</p> <p>6 Q. Flip to the page ending Bates 455.</p> <p>7 It's entitled "5 Year Grandfather Provision."</p> <p>8 A. Okay.</p> <p>9 Q. It says -- strike that.</p> <p>10 What is this graph here designed to</p> <p>11 convey?</p> <p>12 MS. YU: Objection.</p> <p>13 BY MR. SAUDER:</p> <p>14 Q. Or what was Watson Wyatt conveying</p> <p>15 to you in this graph?</p> <p>16 MS. YU: Objection.</p> <p>17 THE WITNESS: I guess it's designed</p> <p>18 to show how, over again, over a period of time how</p> <p>19 the current Atlantic pension benefit grows and how</p> <p>20 the grandfathered cash balance plan would grow.</p> <p>21 BY MR. SAUDER:</p> <p>22 Q. And what is that -- what is that</p> <p>23 indicating to you?</p> <p>24 A. It's indicating to me that the</p>	<p>1 A. That's the way it looks.</p> <p>2 MS. YU: Objection. Joe, are you</p> <p>3 asking him about his interpretation of this graph?</p> <p>4 MR. SAUDER: That's what I'm asking.</p> <p>5 BY MR. SAUDER:</p> <p>6 Q. Is that the way it looks, sir?</p> <p>7 A. That's the way it looks to me.</p> <p>8 Q. The same thing with regard to age</p> <p>9 59, it looks like the current plan was better than</p> <p>10 the cash balance plan, correct?</p> <p>11 MS. YU: Objection.</p> <p>12 THE WITNESS: That's the way it</p> <p>13 looks.</p> <p>14 BY MR. SAUDER:</p> <p>15 Q. Okay. And again, it assumes three</p> <p>16 percent salary increase on the bottom of that</p> <p>17 graph. Is the source of that assumption Watson</p> <p>18 Wyatt?</p> <p>19 A. Yes.</p> <p>20 Q. And this is entitled "5 Year</p> <p>21 Grandfather provision," correct, up at the top of</p> <p>22 this?</p> <p>23 A. Yes.</p> <p>24 Q. And ultimately, Conectiv implemented</p>
Page 103	Page 105
<p>1 grandfathered cash balance plan is better than the</p> <p>2 current plan.</p> <p>3 Q. How about at age 59?</p> <p>4 A. It appears that they're about the</p> <p>5 same at age 59. And at age 61, the grandfather</p> <p>6 cash balance becomes better.</p> <p>7 Q. How about at age 58?</p> <p>8 A. At age 58, it would appear that the</p> <p>9 current -- no. It's kind of hard to tell. It's</p> <p>10 not really clear here.</p> <p>11 Q. Well, there's a grid on the</p> <p>12 right-hand side of the graph, correct?</p> <p>13 A. Yeah, I see it.</p> <p>14 Q. Okay. Does this solid line, to you,</p> <p>15 indicate the cash balance plan?</p> <p>16 A. It does to me, yeah.</p> <p>17 Q. And the dotted line indicates the</p> <p>18 current plan, which would have been the plan in</p> <p>19 effect prior to the cash balance plan being</p> <p>20 implemented?</p> <p>21 A. That's correct, I think.</p> <p>22 Q. So, then at age 58, it would</p> <p>23 indicate that the current plan was better than the</p> <p>24 cash balance plan, correct?</p>	<p>1 a 10 year grandfather provision, correct?</p> <p>2 A. Yes.</p> <p>3 Q. And do you know when this slide was</p> <p>4 presented, whether that was discussed, whether it</p> <p>5 would be a five-year or 10-year or some other</p> <p>6 number?</p> <p>7 A. Say again.</p> <p>8 Q. When this slide was presented by</p> <p>9 Watson Wyatt to you and Don Cain at this February,</p> <p>10 1998 presentation, do you know if it was discussed</p> <p>11 at that time whether there would be a five year</p> <p>12 grandfather provision or a 10 year grandfather</p> <p>13 provision?</p> <p>14 A. I don't recall.</p> <p>15 Q. Okay. Is that something that you</p> <p>16 and Don Cain would have had input in in conjunction</p> <p>17 with Watson Wyatt before it was finalized?</p> <p>18 A. Yes.</p> <p>19 Q. Subsequent to this meeting, do you</p> <p>20 have any recollection of having a meeting with</p> <p>21 Watson Wyatt where you and Don Cain were present,</p> <p>22 and Watson Wyatt was, again, making some type of</p> <p>23 presentation regarding the cash balance plan?</p> <p>24 A. I'm not sure I understood you.</p>

27 (Pages 102 to 105)



BENJAMIN D. WILKINSON

<p style="text-align: right;">Page 106</p> <p>1 Q. You stated that you and Don Cain 2 were at the February 28th, 1998 presentation by 3 Watson Wyatt. Subsequent to that time, do you 4 remember having another similar meeting with Watson 5 Wyatt? 6 A. Oh, yes. 7 Q. Okay. Regarding the cash balance 8 plans? 9 A. (Witness nods.) 10 Q. Yes? 11 A. Lots. 12 Q. And it would have been just you and 13 Don Cain from Conectiv, primarily? 14 A. Well, there probably would have been 15 somebody there from Atlantic Electric also, and 16 there probably would have been someone from 17 Delmarva's finance group, but I don't recall all of 18 the faces. 19 Q. Would any other consultants have 20 been present, outside consultants? 21 A. Probably not. 22 Q. And the purpose of those meetings 23 would be what? 24 A. Keep tweaking the plan design until</p>	<p style="text-align: right;">Page 108</p> <p>1 fairly well along, because it's very detailed with 2 regard to examples and numbers. 3 Q. So, there would have been meetings 4 prior to this? 5 A. Yes. 6 Q. And meetings subsequent to this? 7 A. Probably. 8 Q. You're just not sure how far in time 9 subsequent to this the meetings would have taken 10 place? 11 A. No. 12 Q. I'm showing you what's previously 13 marked as Defense Exhibit 8. After you've had an 14 opportunity to review this document, if you would 15 let me know that you've seen this prior to today. 16 A. Okay. I forget the question again. 17 Q. Do you know if -- have you seen this 18 document prior to today? 19 A. I think so, yes. 20 Q. When would you have seen this 21 document? 22 A. Somewhere or sometime during the 23 design of the entire benefit package, not just the 24 cash balance, but the whole thing.</p>
<p style="text-align: right;">Page 107</p> <p>1 it was something that everybody was comfortable 2 with. 3 Q. The cash balance plan? 4 A. Yep. 5 Q. Did Watson Wyatt work on anything 6 other than the cash balance plan? 7 A. Yes, they worked on health care. I 8 think that's all. The cash balance plan and health 9 care. 10 Q. And would you have been present at 11 the health care meetings? 12 A. Yes. 13 Q. Would Don Cain have been present? 14 A. Only at the point where it was 15 necessary to get senior management approval to keep 16 pushing ahead. 17 Q. You said there would have been lots 18 of other meetings with Watson Wyatt and you and Don 19 Cain regarding the cash balance plan and tweaking 20 the cash balance plan. Do you know, in relation to 21 February '98, how far beyond that you would have 22 still been meeting with Watson Wyatt tweaking the 23 plan? 24 A. This presentation was likely made</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. But prior to it actually being 2 finalized? 3 A. Yes. 4 Q. And in what context would you have 5 seen this document? 6 A. It was a -- in all likelihood, a 7 presentation to some group. 8 Q. Would it have been senior 9 management? 10 A. Probably. 11 Q. And do you know who would have made 12 the presentation? 13 A. I don't recall. 14 Q. When you say "probably senior 15 management," what leads you to believe that it 16 would have been probably senior management? 17 A. It's the kind -- it's -- the design 18 of the document is such that you would find it in 19 those kinds of meetings. It's an overview to get 20 there. 21 Q. How would you define "senior 22 management" in this context? 23 A. That could probably go to include 24 the CEO, maybe the top 10 or 12 guys or gals.</p>

28 (Pages 106 to 109)

BENJAMIN D. WILKINSON

<p style="text-align: right;">Page 110</p> <p>1 Q. Don Cain?</p> <p>2 A. Yeah, Cain would definitely have</p> <p>3 been in there.</p> <p>4 Q. But you're not including in that the</p> <p>5 non-represented management employees who ended up</p> <p>6 in the cash balance plan?</p> <p>7 A. Non-represented management.</p> <p>8 Q. I mean --</p> <p>9 A. We didn't seek approval from the</p> <p>10 line managers on any of this. We took it to them</p> <p>11 as a done deal.</p> <p>12 Q. And that's what this document is, in</p> <p>13 your mind, that's what this document is doing, is</p> <p>14 essentially working through the kinks in the plan?</p> <p>15 MS. YU: Objection.</p> <p>16 THE WITNESS: Yep.</p> <p>17 BY MR. SAUDER:</p> <p>18 Q. Did you play any role in preparing</p> <p>19 this document?</p> <p>20 A. I don't think so.</p> <p>21 Q. Do you know when this presentation</p> <p>22 took place?</p> <p>23 A. No.</p> <p>24 Q. This document is not dated, correct?</p>	<p style="text-align: right;">Page 112</p> <p>1 things like that.</p> <p>2 Q. What other things were hidden?</p> <p>3 A. Let's see. I'm trying to remember</p> <p>4 if they had -- I think they had a survivor benefit</p> <p>5 too that you don't really think about while you're</p> <p>6 alive. Those are the two that come to mind.</p> <p>7 Q. If you flip to the Bates page ending</p> <p>8 199.</p> <p>9 A. Right.</p> <p>10 Q. It's entitled "Background" at the</p> <p>11 top. And then it says "Goals" in the middle of</p> <p>12 that page.</p> <p>13 A. Uh-huh.</p> <p>14 Q. And one of the goals, it says,</p> <p>15 "Costs." Is that referencing a cost savings to the</p> <p>16 company?</p> <p>17 MS. YU: Objection.</p> <p>18 THE WITNESS: I'm drawing a blank as</p> <p>19 to why that's in there. I can speak to the other</p> <p>20 three, but --</p> <p>21 BY MR. SAUDER:</p> <p>22 Q. Well, is it fair to say that</p> <p>23 wouldn't have been a goal of the company to have</p> <p>24 increased cost?</p>
<p style="text-align: right;">Page 111</p> <p>1 A. No.</p> <p>2 MR. SAUDER: Do you want to take a</p> <p>3 break? You have your call, right?</p> <p>4 MS. YU: Yeah, that would be great.</p> <p>5 (Recess at 12:55 p.m.)</p> <p>6 (Resumed at 1:20 p.m.)</p> <p>7 BY MR. SAUDER:</p> <p>8 Q. So, we're still looking at what's</p> <p>9 been marked as Defense Exhibit 8?</p> <p>10 A. Right.</p> <p>11 Q. On the first page of that under</p> <p>12 "Conectiv Total Awards," it says, "The tangible and</p> <p>13 hidden paychecks." What's your understanding of</p> <p>14 what "hidden paychecks," what does that mean in</p> <p>15 this context?</p> <p>16 A. What page are you on?</p> <p>17 Q. The first page, the cover page, or</p> <p>18 the very first cover page.</p> <p>19 A. I think that referred to the fact</p> <p>20 that the total rewards concept was that all of the</p> <p>21 benefits put together are very competitive. Some</p> <p>22 are tangible, you can see them and touch them and</p> <p>23 understand them. And others are kind of hidden,</p> <p>24 like the subsidiaries and the health care and</p>	<p style="text-align: right;">Page 113</p> <p>1 MS. YU: Objection.</p> <p>2 THE WITNESS: Correct. It probably</p> <p>3 had reference to the ability to control costs, that</p> <p>4 they just won't go berserk.</p> <p>5 BY MR. SAUDER:</p> <p>6 Q. Okay. If you flip to the page</p> <p>7 ending 201.</p> <p>8 A. Yep.</p> <p>9 Q. You see those two graphs on that</p> <p>10 page?</p> <p>11 A. Yes.</p> <p>12 Q. The graph on the left-hand side says</p> <p>13 "Retirement."</p> <p>14 A. Uh-huh.</p> <p>15 Q. And the right-hand side is the</p> <p>16 "Health" graph?</p> <p>17 A. Yes.</p> <p>18 Q. If you look at the graph</p> <p>19 "Retirement." Does that graph indicate to you that</p> <p>20 for every \$100 spent by Conectiv for the retirement</p> <p>21 benefits, it was comparing every \$100 that Conectiv</p> <p>22 spent to other companies?</p> <p>23 MS. YU: Objection.</p> <p>24 THE WITNESS: Other local companies.</p>

29 (Pages 110 to 113)

BENJAMIN D. WILKINSON

<p style="text-align: right;">Page 114</p> <p>1 BY MR. SAUDER:</p> <p>2 Q. Okay. Atlantic -- for every \$100</p> <p>3 Conectiv was spending, Atlantic was spending \$122</p> <p>4 on retirement, is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. And Delmarva was spending \$109 on</p> <p>7 the retirement, correct?</p> <p>8 A. Yes.</p> <p>9 Q. If you flip to the page ending 203.</p> <p>10 A. Okay.</p> <p>11 Q. The graph on the left-hand side?</p> <p>12 A. Yes.</p> <p>13 Q. Do you know who that was prepared</p> <p>14 by?</p> <p>15 A. I'm guessing -- I just don't know.</p> <p>16 Q. Do you know what the graph is meant</p> <p>17 to convey?</p> <p>18 MS. YU: Objection.</p> <p>19 THE WITNESS: Yes. It's meant to</p> <p>20 convey that this kind of a plan design is better</p> <p>21 suited to what the company, at that point, thought</p> <p>22 was going to be the new workforce. People leaving</p> <p>23 at earlier ages, not people staying until they've</p> <p>24 got 40 years service.</p>	<p style="text-align: right;">Page 116</p> <p>1 Q. It says "Summary" is the topic and</p> <p>2 then the last bullet says "Expect leaders to</p> <p>3 support direction and positively engage employees."</p> <p>4 Do you know who that's referring to,</p> <p>5 "leaders"?</p> <p>6 A. That would refer to the line</p> <p>7 management. We expect the line management people</p> <p>8 to get on this bandwagon and go out and tell</p> <p>9 everybody how good this package is.</p> <p>10 Q. Okay. I'm showing you what's</p> <p>11 previously been marked as Defense Exhibit 7. I ask</p> <p>12 you, sir, to take a look at that document and let</p> <p>13 me know if you've seen that prior to today?</p> <p>14 A. I'm sorry, what was the question</p> <p>15 again?</p> <p>16 Q. Have you seen this document prior to</p> <p>17 today?</p> <p>18 A. Yes.</p> <p>19 Q. And when would you have seen it?</p> <p>20 A. Probably when it was put together.</p> <p>21 But there are no dates. And it's not the entire</p> <p>22 document.</p> <p>23 Q. Okay. On the portion of the</p> <p>24 document that's been marked as, again, as Defense</p>
<p style="text-align: right;">Page 115</p> <p>1 BY MR. SAUDER:</p> <p>2 Q. And do you know what data or</p> <p>3 assumptions went into the graph?</p> <p>4 A. No.</p> <p>5 Q. Under age and dollars, there's no</p> <p>6 number there, correct?</p> <p>7 A. Not on this copy.</p> <p>8 Q. If you flip to the next page, Bates</p> <p>9 204. Do you see that handwriting there in the</p> <p>10 bottom right-hand corner that says, "15 pre tax,</p> <p>11 five percent after."</p> <p>12 A. Yes.</p> <p>13 Q. Do you know whose handwriting that</p> <p>14 is?</p> <p>15 A. No.</p> <p>16 Q. How about the next page, it's Bates</p> <p>17 205.</p> <p>18 A. Yep.</p> <p>19 Q. There's handwriting there. Do you</p> <p>20 recognize that?</p> <p>21 A. No.</p> <p>22 Q. If you flip to the last page, Bates</p> <p>23 ending 214.</p> <p>24 A. Okay.</p>	<p style="text-align: right;">Page 117</p> <p>1 Exhibit 7, you don't see a date on there, correct?</p> <p>2 A. No.</p> <p>3 Q. Did you play any role in preparing</p> <p>4 this document?</p> <p>5 A. I don't remember this one.</p> <p>6 Q. Do you know who it would have been</p> <p>7 issued to?</p> <p>8 A. This probably went to all employees,</p> <p>9 given the way it's written, "Your Total Conectiv</p> <p>10 Rewards."</p> <p>11 Q. And do you know how it would have</p> <p>12 been sent?</p> <p>13 A. Through the normal internal</p> <p>14 communications channels.</p> <p>15 Q. And if you turn to Bates ending 191.</p> <p>16 It's a Table of Contents.</p> <p>17 A. Yes.</p> <p>18 Q. This is a portion of all of the</p> <p>19 changes that were involved in the total rewards</p> <p>20 package?</p> <p>21 MS. YU: I'm sorry. Can you repeat</p> <p>22 that?</p> <p>23 BY MR. SAUDER:</p> <p>24 Q. Is this Table of Contents, a portion</p>

30 (Pages 114 to 117)

BENJAMIN D. WILKINSON

<p style="text-align: right;">Page 118</p> <p>1 of all of the changes that were involved in the 2 total rewards package? 3 A. Yes. 4 Q. I'll show you what's been marked as 5 Plaintiff's Exhibit 5. Sir, I'm showing you what's 6 been marked as Plaintiff's Exhibit 5. After you've 7 had an opportunity to review that document, can you 8 tell me, have you seen that document prior to 9 today? 10 A. I don't recall. 11 Q. What is this document, sir? 12 A. It's a summary plan description. 13 Q. Do you see a date on this document? 14 A. No. 15 Q. If you flip to the Bates ending 73. 16 A. 73? 17 Q. Yeah, it ends in 73. 18 A. Oh, oh. I'm looking at the -- 19 Q. Sorry. 20 A. Okay. 21 Q. You see where it says, at the very 22 bottom of the page, "Employer Identification 23 Number"? 24 A. Yes.</p>	<p style="text-align: right;">Page 120</p> <p>1 Q. And you don't see the date on this 2 either, correct? 3 A. No. 4 Q. I will show you what's been 5 previously marked as Defense Exhibit 22. And the 6 last page on this document is actually not part of 7 this document. It was stapled in and added in part 8 of the exhibits, so that's not part of the 9 document. I just ask you to review Bates ending 10 308 through 310. I would ask you if you've seen 11 this document prior to today? 12 A. On Page 310? 13 Q. I'm sorry. 308 through 310 is the 14 actual document, that portion of the document, have 15 you seen that prior to today? 16 A. I do not remember this one. 17 Q. I'll show you what's been previously 18 marked as Plaintiff's Exhibit 6. I'm showing you 19 what's been marked as Plaintiff's Exhibit 6. After 20 you've had an opportunity to look at this, I will 21 ask if you've seen this document prior to today? 22 A. No, I've never seen this. 23 Q. Do you know what this document is? 24 A. It looks like a severance agreement</p>
<p style="text-align: right;">Page 119</p> <p>1 Q. Do you see that's blank? 2 A. Yes. 3 Q. Okay. If you flip over to the next 4 page, where it says "Participating Employer" and 5 then "Employer Education Number" and they're both 6 blank? 7 A. Yes. 8 Q. And then Number 8 says "Trustee" and 9 that says "Name and Address," and there's nothing 10 filled in there? 11 A. Yes. 12 Q. Is this an indication to you that 13 this is a draft? 14 MS. YU: Objection. 15 THE WITNESS: I don't know. 16 BY MR. SAUDER: 17 Q. Okay. I will show you what's 18 previously been marked as Defendant's 19. Sir, I'm 19 showing you what's been marked as D-19. After 20 you've had an opportunity to review this, have you 21 seen this document prior to today? 22 A. I don't remember this. 23 Q. You don't remember seeing this? 24 A. No.</p>	<p style="text-align: right;">Page 121</p> <p>1 or something. 2 Q. Did you, during the time that you 3 were at Conectiv, did you play any role in drafting 4 severance agreements or releases? 5 A. No. 6 Q. Did you see any releases that 7 employees signed when they left the company? 8 A. I think so. I just don't recall any 9 specific one. 10 Q. And were there form releases -- 11 A. Yes. 12 Q. -- that Conectiv used? 13 A. Yes. 14 Q. Did you sign a release when you left 15 the company? 16 A. No. 17 Q. I'll show you what's been marked as 18 Plaintiff's Exhibit 7. Sir, I'm showing you what 19 has previously been marked as Plaintiff's Exhibit 20 7. Have you seen this document prior to today? 21 A. No. 22 Q. This was also marked "General 23 Release" with the title "Pepco Holdings." Have you 24 ever seen a form similar to this release?</p>

31 (Pages 118 to 121)

BENJAMIN D. WILKINSON

<p style="text-align: right;">Page 122</p> <p>1 A. No.</p> <p>2 Q. You were gone from the company by</p> <p>3 the time Pepco came in, correct?</p> <p>4 A. Oh, yes.</p> <p>5 Q. Sir, of the -- when the cash balance</p> <p>6 plan became effective, do you know, in percentages</p> <p>7 or proportionate, what percentage of employees at</p> <p>8 Conectiv, which would have been Delmarva and ACE,</p> <p>9 what percentage were grandfathered?</p> <p>10 MS. YU: Objection.</p> <p>11 THE WITNESS: I wouldn't have the</p> <p>12 faintest idea.</p> <p>13 BY MR. SAUDER:</p> <p>14 Q. Do you know what percentage were</p> <p>15 union?</p> <p>16 MS. YU: Objection.</p> <p>17 THE WITNESS: No.</p> <p>18 BY MR. SAUDER:</p> <p>19 Q. And do you know what percentage were</p> <p>20 management that were not represented, in other</p> <p>21 words, a percentage that ended up in the cash</p> <p>22 balance plan?</p> <p>23 MS. YU: Objection.</p> <p>24 THE WITNESS: You mean the</p>	<p style="text-align: right;">Page 124</p> <p>1 which ones of these communications were prepared</p> <p>2 during the time that you were in the position with</p> <p>3 HR and compensation and benefits and which were</p> <p>4 not, when you moved on to the next position with</p> <p>5 Conectiv. So, I thought we could just go through</p> <p>6 and if you could indicate which ones --</p> <p>7 A. Okay.</p> <p>8 Q. -- are in those general categories,</p> <p>9 that would be great. The first one we didn't have</p> <p>10 marked, but I think it was Defense Exhibit 1.</p> <p>11 MR. SAUDER: October 13, 1997.</p> <p>12 BY MS. YU:</p> <p>13 Q. October 13, 1997. Mr. Wilkinson,</p> <p>14 what was your position during that time frame?</p> <p>15 A. I was the manager of compensation</p> <p>16 and benefits.</p> <p>17 Q. Do you have any specific knowledge</p> <p>18 right now as to how that communication was, in</p> <p>19 fact, distributed to employees?</p> <p>20 A. This was probably distributed</p> <p>21 through the normal communication channels that the</p> <p>22 two companies set up when they merged.</p> <p>23 Q. And I understand that you testified</p> <p>24 that there were general ways in which</p>
<p style="text-align: right;">Page 123</p> <p>1 percentage of the total workforce?</p> <p>2 BY MR. SAUDER:</p> <p>3 Q. Right.</p> <p>4 A. No.</p> <p>5 MR. SAUDER: I think I'm done. Can</p> <p>6 we just take five minutes?</p> <p>7 MS. YU: Sure, sure.</p> <p>8 (Discussion is held off the record.)</p> <p>9 MR. SAUDER: Sir, I don't have any</p> <p>10 other questions, but I would just ask, if you plan</p> <p>11 on moving and end up moving any time in the near</p> <p>12 future before this case is resolved, if you can</p> <p>13 contact your counsel from Pepper Hamilton and just</p> <p>14 let them know of any change of address.</p> <p>15 THE WITNESS: Sure.</p> <p>16 MR. SAUDER: I have no other</p> <p>17 questions at this time.</p> <p>18 MS. YU: I just have a few questions</p> <p>19 EXAMINATION</p> <p>20 BY MS. YU:</p> <p>21 Q. Mr. Wilkinson, we have reviewed a</p> <p>22 few documents, a number of which are communications</p> <p>23 that relate to the implementation of the cash</p> <p>24 balance plan. And I would like to review with you</p>	<p style="text-align: right;">Page 125</p> <p>1 communications were distributed and, for example, I</p> <p>2 understand that you said they could be sent by mail</p> <p>3 to a person's home?</p> <p>4 A. Uh-huh.</p> <p>5 Q. That they may be distributed</p> <p>6 internally through the company, that there may be</p> <p>7 electronic means as well, so there's a variety of</p> <p>8 processes through which communications were</p> <p>9 distributed. Do you have any personal knowledge</p> <p>10 right now as you're sitting here today as to which</p> <p>11 method was used specifically for that</p> <p>12 communication?</p> <p>13 A. I would have to guess.</p> <p>14 Q. So, you don't have any -- I want you</p> <p>15 only to explain what you, in fact, remember. And</p> <p>16 if you would have to guess -- I understand that</p> <p>17 there are things that you could probably look at as</p> <p>18 to the document that might give you some indication</p> <p>19 as a likely or a probable method -- but</p> <p>20 specifically as to, in fact, this was distributed,</p> <p>21 do you have any personal knowledge or recollection</p> <p>22 as you sit here today?</p> <p>23 A. This is one of many under the</p> <p>24 EMerging Times banner.</p>

32 (Pages 122 to 125)



BENJAMIN D. WILKINSON

<p style="text-align: right;">Page 126</p> <p>1 Q. Yes.</p> <p>2 A. Which was a theme developed by the</p> <p>3 communications people early on. So every time</p> <p>4 somebody says, "Hey, there's a new EMerging Times</p> <p>5 coming out, go get a copy," you knew it had to do</p> <p>6 with the merger itself.</p> <p>7 Q. But this specific one that is dated</p> <p>8 October 13th, 1997, do you know how it was</p> <p>9 distributed?</p> <p>10 A. I can't say for certain.</p> <p>11 Q. What's been marked as Defendant's</p> <p>12 Exhibit 2 is the EMerging Times dated October 20th,</p> <p>13 1997?</p> <p>14 A. Correct.</p> <p>15 Q. Were you the manager of compensation</p> <p>16 and benefits at that time?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know specifically how this</p> <p>19 particular communication, which is dated October</p> <p>20 20th, 1997 was distributed?</p> <p>21 A. I can't say exactly.</p> <p>22 Q. Now, I'm handing you what's been</p> <p>23 marked as D-6, which is a communication dated</p> <p>24 December 21st, 1998.</p>	<p style="text-align: right;">Page 128</p> <p>1 communication was distributed to employees?</p> <p>2 A. This one was mailed to the</p> <p>3 employee's homes.</p> <p>4 Q. I'm handing you P-3.</p> <p>5 A. Okay.</p> <p>6 Q. Do you have any specific knowledge</p> <p>7 as to how that particular communication was</p> <p>8 distributed to employees?</p> <p>9 A. No.</p> <p>10 Q. I'm handing you D-9, which is an</p> <p>11 InSite communication that is dated March 1999. Do</p> <p>12 you have any specific knowledge as to how that</p> <p>13 particular communication was distributed?</p> <p>14 A. No.</p> <p>15 Q. This is D-10. It's the Mid Week</p> <p>16 Extra communication dated June 23rd, 1999.</p> <p>17 A. Yes.</p> <p>18 Q. Do you have any specific knowledge</p> <p>19 as to how that communication was distributed to</p> <p>20 employees?</p> <p>21 A. No.</p> <p>22 Q. This is Exhibit D-12. It says</p> <p>23 "InSight online." Do you have any specific</p> <p>24 knowledge as to how that communication was</p>
<p style="text-align: right;">Page 127</p> <p>1 A. Yes.</p> <p>2 Q. What was your position at that time?</p> <p>3 A. I was a Human Resources personnel</p> <p>4 manager.</p> <p>5 Q. Okay. Did you have any</p> <p>6 responsibility for the distribution of that</p> <p>7 communication?</p> <p>8 A. In the role as the Human Resources</p> <p>9 personnel manager, yes, it was my responsibility to</p> <p>10 make sure this communication got to or was</p> <p>11 available to everybody that was in the Shared</p> <p>12 Services group.</p> <p>13 Q. Did you have any such</p> <p>14 responsibilities for any employees outside of the</p> <p>15 Shared Services group?</p> <p>16 A. No.</p> <p>17 Q. Do you know specifically how that</p> <p>18 particular communication in D-6 was actually</p> <p>19 distributed?</p> <p>20 A. No.</p> <p>21 Q. I am going to hand you D-5, which is</p> <p>22 one of the "facts" communications.</p> <p>23 A. Okay.</p> <p>24 Q. Do you know how that particular</p>	<p style="text-align: right;">Page 129</p> <p>1 distributed to employees?</p> <p>2 A. Electronically.</p> <p>3 Q. This is D-7, a portion of "Your</p> <p>4 Conectiv Total Rewards." And on the front page it</p> <p>5 says "Conectiv 1998 to '99."</p> <p>6 Do you have any specific knowledge</p> <p>7 as to how that communication was distributed to</p> <p>8 employees?</p> <p>9 A. No.</p> <p>10 Q. Finally, this is D-22. And that</p> <p>11 communication says "Introducing the New Cash</p> <p>12 Balance Plan Retirement Plan" at the top. Do you</p> <p>13 have any specific knowledge how that communication</p> <p>14 was distributed to employees?</p> <p>15 A. No.</p> <p>16 Q. Okay.</p> <p>17 MR. SAUDER: That was D-22?</p> <p>18 MS. YU: D-22, yes. Those are all</p> <p>19 of the questions I have.</p> <p>20 MR. SAUDER: I just have a couple</p> <p>21 based on that.</p> <p>22 FURTHER EXAMINATION</p> <p>23 BY MR. SAUDER:</p> <p>24 Q. Looking back at D-6.</p>

33 (Pages 126 to 129)